

Mao Declaration

Exhibit 95

Redacted Version of Document
Sought to Be Sealed

Amir Transcript

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

4 CHASOM BROWN, WILLIAM BYATT,) Case No.
5 JEREMY DAVIS, CHRISTOPHER) 5:20-cv-03664-LHK-
6 CASTILLO, and MONIQUE TRUJILLO) SVK
7 individually and on behalf of)
8 all other similarly situated,)
9 Plaintiffs,)
10 vs.)
11 GOOGLE LLC,)
12 Defendant.)
_____)

CONFIDENTIAL

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED

DEPOSITION OF ON AMIR, PH.D.

Tuesday, August 16, 2022

Remotely Testifying from La Jolla, California

21 Stenographically Reported By:

22 Hanna Kim, CLR, CSR No. 13083

23 | Job No. 5344524

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10 vs.)
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12 Defendant.)
13 _____)

16 Confidential, virtual videoconference
17 video-recorded deposition of ON AMIR,
18 PH.D., remotely testifying from La Jolla,
19 California, taken pursuant to the
20 stipulations of counsel thereof, on
21 Tuesday, August 16, 2022, before Hanna
22 Kim, CLR, Certified Shorthand Reporter,
23 No. 13083.

1 REMOTE VIDEOCONFERENCE APPEARANCES OF COUNSEL:

2
3 For Plaintiffs:

4 BOIES SCHILLER FLEXNER LLP

5 BY: BEKO O. REBLITZ-RICHARDSON, ESQ.

6 BY: MARK C. MAO, ESQ.

7 BY: ALISON ANDERSON, ESQ.

8 100 SE 2nd St., 28th Floor

9 Miami, Florida 33131

10 305.539.8400

11 brichardson@bsfllp.com

12 -and-

13 MORGAN & MORGAN LAW FIRM

14 BY: MICHAEL RAM, ESQ.

15 711 Van Ness Avenue, Suite 500

16 San Francisco, California 94102-3275

17 415.358.6913

18 mram@forthepeople.com

19

20

21

22

23

24

25

1 REMOTE APPEARANCES OF COUNSEL: (CONTINUED)
2

3 For Defendant:

4 QUINN EMANUEL URQUHART & SULLIVAN, LLP

5 BY: ALYSSA "ALY" OLSON, ESQ.

6 865 S. Figueroa Street, 10th Floor

7 Los Angeles, California 90017

8 213.443.3000

9 alyolson@quinnemanuel.com

10
11 For Plaintiffs: (Calhoun vs. Google)

12 SIMMONS HANLY CONROY

13 BY: AN TRUONG, ESQ,

14 112 Madison Avenue, 7th Floor

15 New York, New York 10016-7416

16 212.257.8482

17 atruong@simmonsfirm.com

18
19 Also Present:

20 MARK KEEGAN, for Plaintiffs

21 Haimin Zhang, Analysis Group

22 SEAN GRANT, Videographer

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1 Remotely Testifying from La Jolla, California

2 Tuesday, August 16, 2022; 8:05 a.m., PDT

3 --oo--

4 THE VIDEOGRAPHER: Good morning. We're on
5 the record. The time is 8:05 a.m., and the date is 08:05:33
6 August 16th, 2022.

7 Please note that this deposition is being
8 conducted virtually.

9 Audio recording depends on the quality of
10 camera and internet connection of participants. 08:05:45
11 What is seen from the witness and heard on screen is
12 what will be recorded.

13 Audio and video recording will continue to
14 take place unless all parties agree to go off the
15 record. 08:06:00

16 This is Media Unit Number 1 of the
17 video-recorded deposition of Dr. On Amir.

18 This deposition is being taken on behalf
19 of counsel for Plaintiffs in the matter of Chasom
20 Brown, et al., versus Google LLC, filed in the 08:06:10
21 United States District Court, Northern District of
22 California. Case Number: 5:20-cv-03664-YGR-SVK.

23 And is being conducted remotely using
24 virtual technology.

25 My name is Sean Grant from the firm 08:06:29

1 Veritext. I'm the videographer.

2 And the court reporter is Hanna Kim, also
3 from Veritext.

4 I am not related to any party, nor am I
5 financially interested in the outcome. 08:06:42

6 If there are any objections to proceeding,
7 please state them at the time of your appearance.

8 Counsel and all present, including
9 remotely, will now state their appearances and
10 affiliations for the recording, beginning with the 08:06:52
11 noticing attorney.

12 MR. REBLITZ-RICHARDSON: Good morning.

13 Beko Reblitz-Richardson of Boies Schiller Flexner on
14 behalf of the Plaintiffs.

15 With me are Mark Mao and Alison Anderson, 08:07:10
16 also of Boies Schiller Flexner; Michael Ram from the
17 Morgan & Morgan Law Firm; and also Mark Keegan, an
18 expert retained by the Plaintiffs in this matter.

19 MS. OLSON: Aly Olson from Quinn Emanuel
20 on behalf of Google and the witness. 08:07:19

21 And with me is Haimin Zhang, who is a
22 consulting expert from Analysis Group.

23 THE VIDEOGRAPHER: Ms. Troung.

24 MS. TROUNG: An Troung, Simmons Hanly
25 Conroy, appearing pursuant to court order for the 08:07:31

1 Calhoun Plaintiffs in the related case.

2 THE VIDEOGRAPHER: Thank you.

3 Will the certified court reporter please
4 swear in the witness.

5

6 ON AMIR, PH.D.,

7 having been duly administered an oath over
8 videoconference as stipulated by all counsel, was
9 examined and testified as follows:

10 THE VIDEOGRAPHER: Counsel.

11

12 EXAMINATION

13 BY MR. REBLITZ-RICHARDSON:

14 Q. Good morning, Professor.

15 A. Good morning.

08:08:04

16 Q. Please state your full name.

17 A. On Amir.

18 Q. Do you understand that you are under oath?

19 A. I do.

20 Q. If there is -- is there any reason you

08:08:12

21 cannot testify truthfully today?

22 A. No.

23 Q. If my question is unclear, would you
24 please let me know.

25 A. Certainly will.

08:08:24

1 Q. Is Google's counsel representing you for
2 this deposition?

3 A. Yes, she is.

4 Q. And where are you right now for this
5 deposition? 08:08:34

6 A. I'm in my office at UC San Diego.

7 Q. Do you have anyone in the room there with
8 you?

9 A. I do not.

10 Q. Do you have any documents with you for the 08:08:43
11 deposition?

12 A. I do not.

13 Q. What, if anything, did you do to prepare
14 for today's deposition?

15 A. I reread my three reports and many of the 08:08:54
16 related documents that I used to formulate these
17 reports.

18 I met with my support team at Analysis
19 Group to go over the data and analysis and met with
20 counsel to discuss this -- 08:09:19

21 MS. OLSON: Dr. Amir, I just -- you don't
22 need to say what you discussed with counsel.

23 THE WITNESS: Thank you.

24 BY MR. REBLITZ-RICHARDSON:

25 Q. Anything else to prepare for today's 08:09:31

1 deposition?

2 A. I tried to have a good breakfast.

3 Q. Anything else?

4 A. No.

5 Q. In total, how much time did you spend 08:09:39

6 preparing for this deposition?

7 A. Probably eight to ten hours.

8 Q. And you said you reviewed not only your

9 three reports, but some additional documents.

10 Do you recall that? 08:10:00

11 A. I did.

12 Q. And -- and were the -- those the documents

13 cited in your reports?

14 A. Yes, they are.

15 Q. Did you review any documents not cited in 08:10:09

16 your reports in preparation for your deposition

17 today?

18 A. I don't think so.

19 Q. Who hired you?

20 A. The counsel firm that Aly represents. 08:10:22

21 Q. And when were you hired?

22 A. I'm not sure, to be honest. I don't

23 remember the date.

24 Q. Approximately?

25 A. I honestly don't remember. 08:10:48

1 Q. Was it this year?

2 A. I don't want to give you the wrong answer.

3 I don't remember.

4 Q. It was before you submitted your first
5 report; correct? 08:11:09

6 A. It was obviously before -- way before I
7 submitted my first report. It was way before I
8 conducted the affirmative studies. I just don't
9 remember the dates.

10 Q. Okay. And what were you hired to do? 08:11:21

11 A. As stated in my report, I was hired to
12 offer an opinion on specific questions raised.

13 Q. And those specific questions are detailed
14 in your reports; right?

15 A. Yes, they are detailed in my report. 08:11:41

16 Q. And who first contacted you about being an
17 expert in this matter?

18 A. It was someone from Aly's firm through
19 Analysis Group that contacted me.

20 Q. Do you know the person's name? 08:12:03

21 A. I don't remember. It's been a while.

22 Q. Who explained your assignment to you?

23 A. As usually in these matters, I had the
24 first meeting with attorneys, and they raised the
25 question. I judged that it's a question that I can 08:12:20

1 actually attempt to address.

2 And I believe after that there was a
3 meeting with the attorneys, with the Google internal
4 attorneys. And then they decided that I would be
5 the right person for the job. I believe that was 08:12:47
6 the process.

7 Q. Were there any changes in your assignment
8 over time?

9 A. I don't believe there were changes, no.

10 Q. Other than this lawsuit, have you ever 08:13:03
11 done any work for the Quinn Emanuel law firm?

12 A. I don't think I have.

13 Q. Other than this lawsuit, have you ever
14 done any work for Google?

15 A. I -- no. 08:13:16

16 Q. Have you ever received any funding from
17 Google?

18 A. No.

19 Q. What about Alphabet?

20 A. No. 08:13:25

21 Q. Okay.

22 Do you see that you have what's been
23 premarked as Amir Exhibit 1, Amir Exhibit 2, and
24 Amir Exhibit 3?

25 A. Yes. 08:13:40

1 (Amir Deposition Exhibit 1 was marked
2 electronically.)

3 BY MR. REBLITZ-RICHARDSON:

4 Q. Just for the record, can you tell me what 08:13:42
5 Amir Exhibit 1 is?

6 A. Amir Exhibit 1 seems to be my affirmative
7 report in this case.

8 (Amir Deposition Exhibit 2 was marked
9 electronically.)

10 BY MR. REBLITZ-RICHARDSON:

08:13:52

11 Q. And what is Amir Exhibit 2?

12 A. Amir Exhibit 2 seems to be the rebuttal
13 report I submitted after reading the other side's
14 experts' reports.

15 (Amir Deposition Exhibit 3 was marked 08:14:11
16 electronically.)

17 BY MR. REBLITZ-RICHARDSON:

18 Q. And what is Amir Exhibit 3?

19 A. Amir Exhibit 3 is the supplemental report
20 I submitted after reading Keegan's rebuttal report 08:14:23
21 that contained new data.

22 Q. And so Amir Exhibit 1, 2, and 3, are those
23 the three reports you served in this matter?

24 A. Yes, they seem to be the re- -- my
25 reports. 08:14:43

1 Q. And do Amir Exhibits 1, 2, and 3 contain a
2 complete statement of all opinions you will express
3 in this case?

4 A. They contain the opinions I provided.

5 Q. Are those the opinions you plan to express 08:14:57
6 in this case?

7 A. Unless new data shows up, yes.

8 Q. And do Amir Exhibits 1, 2, and 3 contain
9 all the bases for your opinions?

10 A. Yes, they do. 08:15:09

11 Q. And in preparing for your deposition
12 today, you reviewed these three reports again;
13 correct?

14 A. That is correct.

15 Q. In doing so, did you identify anything 08:15:18
16 inaccurate in any of your three reports?

17 A. No.

18 Q. Did you write your reports?

19 A. Yes, I did.

20 Q. Did you write every word? 08:15:35

21 A. I wrote every word.

22 Q. Did anyone help you prepare your three
23 reports?

24 A. Yes.

25 Q. Who helped you write these three reports? 08:15:43

1 A. I have a team in Analysis Group. Haimin
2 here on the call is representing this team. They
3 provide research support, and they certainly helped
4 generate parts of the reports.

5 Q. Did Google's counsel perform any part of 08:16:03
6 the work for these three reports?

7 A. No.

8 Q. The team at AG, what are the names of
9 those people?

10 A. Haimin, Brad, and Harriet. 08:16:13

11 Q. What's Brad's last name?

12 A. I don't remember.

13 Q. What's Harriet's last name?

14 A. I don't remember.

15 Q. Had you worked with Haimin Zhang 08:16:30
16 previously?

17 A. I think I have. I have several teams that
18 help me at Analysis Group.

19 Q. What did you work -- what did you work on
20 with him previously? 08:16:46

21 A. Her. I don't remember actually which case
22 Haimin helped me with.

23 Q. What about Brad, had you worked with Brad
24 before?

25 A. I believe that on the same case I worked 08:16:57

1 with Haimin before.

2 Q. And what was that case?

3 A. I don't remember.

4 Q. What about Harriet?

5 A. Same answer.

08:17:05

6 Q. Same answer, you believe you worked with
7 Harriet before, but you don't know Harriet's last
8 name and you don't know what case it was?

9 A. Yes. I can find out easily if you allow
10 me to pull an e-mail, but I don't remember by heart. 08:17:24

11 Q. Well, we can follow up with your counsel
12 at the break.

13 Did any Google employees assist you with
14 these three reports?

15 A. No.

08:17:31

16 Q. In connection with your work on this
17 matter, did you talk to any Google employees?

18 A. No.

19 Q. Did you select the people from Analysis
20 Group that you worked with on this case? 08:17:39

21 A. No.

22 Q. How many hours have you spent on this
23 matter so far?

24 A. I don't remember.

25 Q. Approximately.

08:17:56

1 A. I can check.

2 Q. Approximately.

3 A. Probably 40 to 50 hours, maybe more. I
4 don't remember.

5 Q. Do you know how much time the Analysis 08:18:21
6 Group team has spent on this matter so far?

7 A. Not by heart, certainly.

8 Q. More than 40 to 50 hours?

9 A. I'm sure, because it's many people.

10 Q. Fair to say that Analysis Group has spent 08:18:35
11 more time on this matter than you have?

12 A. In total, I sent them to do different
13 tasks, and they performed the tasks. That's the
14 type of the relationship. And so I presume that
15 those tasks take time. I don't know how much 08:18:50
16 relative to mine. As I told you, I don't remember
17 exactly how many hours I spent.

18 Q. Have you communicated with any other
19 expert retained by Google?

20 A. No. 08:19:07

21 Q. Have you reviewed any reports served by
22 any of Google's other experts?

23 A. No.

24 Q. Are you familiar with the opinions
25 Google's other experts are offering in this case? 08:19:17

1 A. I don't believe I am.

2 Q. You're a marketing professor; correct?

3 A. Yes.

4 Q. And you received your Ph.D. in 2003; is
5 that right? 08:19:30

6 A. Yes.

7 Q. Have you been teaching marketing ever
8 since 2003?

9 A. I'm not sure exactly what you mean by
10 "teaching marketing," but I've taught 08:19:41
11 marketing-related courses, different courses, since
12 2003.

13 Q. Have you previously been an expert in
14 other lawsuits?

15 A. I have. 08:19:51

16 Q. How many times?

17 A. Maybe nine or ten.

18 Q. When was the first time you were retained
19 as a litigation expert?

20 A. I don't remember. 08:20:06

21 Q. Do you recall what lawsuit it was?

22 A. Yes.

23 Q. What was the name of that lawsuit?

24 A. I don't remember the formal name, but it
25 was a -- a consumer protection lawsuit against a 08:20:18

1 company called Vince.

2 Q. How do you spell that company name?

3 A. V-I-N-C-E.

4 Q. Did you prepare a report in that matter?

5 A. I did. By the way, if we want to scroll 08:20:33
down to my CV that's on the exhibit that's open, we
6 could probably see the details.
7

8 Q. Great.

9 So you're looking at Amir Exhibit 1; is
10 that right? 08:20:46

11 A. I think so.

12 Q. And could you direct us to the page that
13 has the details?

14 A. Certainly. So Appendix A is my CV.

15 Q. And Appendix B is your prior testimony; 08:21:17
16 correct?

17 A. And the second case listed there, Arechiga
18 versus Kellwood Company/Vince LLC, that was the
19 first case I submitted a report for.

20 There was another case I was retained, but 08:21:37
21 nothing ever happened in that case.

22 Q. And when you say "nothing ever happened,"
23 you mean you never served a report; is that right?

24 A. Yeah. It was a big lawsuit that was
25 un- -- was already undergoing for ten years. And 08:21:53

1 I've done some work and discovered that there should
2 be documents that would provide the data needed, and
3 then the lawyers disappeared. It turns out sadly
4 that one of them died of cancer.

5 And every year I get a call from the law 08:22:14
6 firm saying, "Hey, you know, we still have this
7 lawsuit. Would you still be able to help us?" And
8 I say yes, but I don't -- I don't know what the
9 status of that lawsuit is.

10 Q. So Appendix B has six separate actions 08:22:24
11 there.

12 Do you see that?

13 A. Yes.

14 Q. And is it correct that you provided
15 testimony in each of those six actions? 08:22:36

16 A. Yes.

17 Q. Have you previously testified in any other
18 case?

19 A. I have not.

20 Q. Have you previously designed a survey for 08:22:46
21 litigation?

22 A. When you say "previously," what do you
23 mean?

24 Q. Before this case.

25 A. Of course. 08:22:59

1 Q. When?

2 A. I designed a survey in the San Diego
3 Credit Union case, in the Yamagata/Reckitt Benckiser
4 case and -- yeah, and there was a case that I was
5 the internals that was advocated, but I ended up 08:23:26
6 designing a study. But I'm not the expert on
7 record, so it's not listed here.

8 Q. What was that case?

9 A. I don't know if I'm at liberty to say.
10 I'm not -- you know, I'm not -- I'm not on record, 08:23:42
11 and I think it's a -- a confidential case.

12 Q. Well, is it a case that's been filed?

13 A. I think it has.

14 Q. Can you just tell me the name of the case?

15 A. I don't remember, but it's -- has to do 08:23:57
16 with the components of setup boxes in TV viewing
17 devices.

18 Q. And it's your testimony that you designed
19 a survey for that matter?

20 A. Yeah, I helped design a survey there as -- 08:24:15
21 as one of the team members.

22 Q. For -- for what -- what party were you
23 working for on that case?

24 A. You know, I don't know if I'm at liberty
25 to reveal details for that case, so that's -- you 08:24:44

1 know, it's -- it's not listed here. You -- you can
2 ignore that. I don't want to say things that I'm
3 not supposed to say.

4 Q. So --

5 A. I believe it settled, so... 08:25:00

6 Q. Your -- your counsel is -- is free to
7 object to questions and instruct you not to answer,
8 but I'd ask that you otherwise answer my question.

9 So are you unwilling to tell me the name
10 of that case where you designed this study? 08:25:10

11 A. Yes.

12 Q. Okay. We'll follow up with that later.

13 Other than the Yamagata and San Diego
14 County cases that you identified, before this case,
15 had you ever designed a survey for litigation? 08:25:28

16 A. No, I don't think I designed a study in
17 the rest of the cases.

18 Q. So you had done this twice before this
19 case; is that fair?

20 A. For litigation. 08:25:49

21 Q. For litigation, yes.

22 A. I've designed hundreds of studies just in
23 the last few years, but not for litigation purposes.

24 Q. Right.

25 And I'm trying to understand for 08:26:01

1 litigation purposes, prior to this case, you had
2 done that twice before; is that right?

3 A. In two different cases, but more than one
4 study per case.

5 Q. So how many studies were there in the 08:26:13
6 Yamagata case?

7 A. Four studies in the Yamagata case.

8 Q. And how many studies were there in the
9 San Diego County Credit Union case?

10 A. There was one study in the San -- in the 08:26:27
11 San Diego case.

12 Q. So prior to this case, you had designed
13 five studies for litigation in two cases; is that
14 correct?

15 A. I think so, yes. 08:26:36

16 Q. Have you ever testified at trial?

17 A. I have.

18 Q. How many times?

19 A. Once.

20 Q. And when was that? 08:26:53

21 A. This was in the San Diego Credit Union
22 case.

23 Q. When was that trial testimony?

24 A. Approximately two years ago.

25 Q. Have you ever had any opinion excluded by 08:27:08

1 any court?

2 A. Yes.

3 Q. What happened?

4 A. In the Brown case, the other side did not
5 produce an actual survey, but 20-year-old reports 08:27:20
6 describing the survey.

7 I submitted an expert opinion based on the
8 reports. The judge concluded that since there was
9 no actual survey, she did not need a survey expert,
10 and that counsel can use my insights about the 08:27:39
11 report in their cross-examination.

12 There were many experts in that report and
13 so -- in that case, and so she felt that the fewer
14 experts she had to deal with was better.

15 Q. What was the name of that case? 08:27:57

16 A. This is the Warner Records versus Charter
17 Communications.

18 Q. So in the Warner Records case, your
19 testimony was excluded; is that correct?

20 A. Yes. 08:28:08

21 Q. Any other case where a court has excluded
22 your testimony?

23 A. No.

24 Q. Have you ever had your -- any opinion
25 criticized by any court? 08:28:18

1 A. In the San Diego Credit Union case, the
2 four matt- -- five matters, four basically we won.
3 And then the fifth was not something that I was
4 retained to opine on.

5 The lawyers still thought that the data I 08:28:40
6 collected would be useful for that. The judge said
7 that given that it wasn't -- this data wasn't
8 collected for that purpose, he's going to put less
9 weight on it. If you call that criticism, then --
10 then yes. 08:28:57

11 Q. So in the San Diego County case, it's your
12 testimony that the judge simply concluded that your
13 opinions were entitled to less weight? Is that what
14 you're testimony?

15 MS. OLSON: Objection. Misstates the 08:29:09
16 testimony.

17 Go ahead.

18 THE WITNESS: Yeah, he said that given
19 that the data wasn't collected for the purpose of
20 that fifth question, he's going to put less weight 08:29:17
21 on that data when he reaches an -- an opinion -- or
22 a decision, sorry.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. San Diego County, that was a trademark
25 case; right? 08:29:34

1 A. Yes.

2 Q. And what were you retained to do?

3 A. I was retained to assess the degree of
4 potential confusion between an existing mark and --
5 and new mark in a particular location and 08:29:46
6 population.

7 Q. And in the San Diego County case, was that
8 the first time you had conducted a survey used in
9 litigation?

10 A. Yes.

08:29:58

11 Q. And when did you conduct that survey?

12 A. I don't remember.

13 Q. And you conducted just one survey; right?

14 A. Yes.

15 Q. And in that case, the Court said your 08:30:08
16 survey was flawed; correct?

17 A. Incorrect. That's -- that's entirely not
18 what I said.

19 Q. But it's your testimony that the Court did
20 not find your survey flawed? 08:30:23

21 A. Yes. There were five different matters.

22 Four of them the -- the Court relied on my survey to
23 rule in favor of the side that -- that I opined for.

24 In the fifth matter that was out of my
25 assignment, it wasn't something I was retained to 08:30:44

1 do. But the -- I don't know how these things work.
2 The -- the attorney said that each side is entitled
3 for two experts only, two witnesses, in that
4 particular issue.

5 They wanted me to describe how auxiliary 08:31:00
6 data that I collected could speak to the matter at
7 hand. They were right; it could. And the judge
8 said that given that this is not the -- this was not
9 the goal for which I was originally retained and the
10 data that I showed wasn't the standard methodology 08:31:21
11 the court is used to seeing for that particular
12 matter -- again, this is not the matter that I was
13 hired to opine on originally or designed a study
14 for -- he's not going to put a lot of weight on that
15 data. 08:31:41

16 Q. If you recall, in the San Diego County
17 case, what weight did the Court give your testimony?

18 A. I don't know.

19 Q. Do you recall that the Court gave your
20 testimony little or minimal weight? 08:31:52

21 A. I don't know. As I said, I told you
22 exactly what the judge ruled. I think I'm not
23 saying this verbatim from the decision, but it's
24 pretty close to what I said.

25 Q. You read the decision, though? 08:32:08

1 A. Yes.

2 Q. And you don't recall the Court writing
3 that it gave your testimony little or minimal
4 weight?

5 A. I said what I recall the judge saying is 08:32:17
6 he's not going to put a lot of weight on the data
7 that was not collected for the purpose of that
8 particular legal question.

9 Q. But you don't recall specifically the
10 Court stating that it gives your testimony little or 08:32:32
11 minimal weight --

12 A. No.

13 Q. -- is that correct?

14 A. I do not.

15 Q. Who won that case? 08:32:40

16 A. Again, the case had five different --
17 different matters. Four matters, I think, were won
18 by CEFCU, which is the side that hired me. And the
19 last one, I think, was won by SDCCU, the other side.

20 Q. Did the Court grant judgment against your 08:33:06
21 client?

22 A. I don't know what that means.

23 Q. The Yamagata case, what was that about?

24 A. The Yamagata case was a case about -- the
25 issue was with labeling on the package. 08:33:25

1 Q. And what were you retained to do?

2 A. The question was to what extent and how
3 does -- how do different aspects of labeling on the
4 packaging of particular products impact the -- the
5 perceptions of customers and potential customers, 08:33:52
6 their understandings of what this product does, and
7 the likelihood that they would buy that product.

8 Q. The BBK Tobacco case, the last one you
9 list here, what -- what is that case about?

10 A. It's a trademark case between two 08:34:15
11 companies that sell different things related to the
12 marijuana industry.

13 Q. And what -- what is the plaintiff in that
14 case? Who is the plaintiff? Is that BBK Tobacco &
15 Foods? 08:34:44

16 A. I think so.

17 Q. Is that a tobacco company? They sell
18 tobacco?

19 A. I don't know if they also sell tobacco.
20 They -- it is my understanding that both companies 08:34:55
21 sell materials right now that -- that are sold in
22 CBD and THC dispensaries.

23 Q. All right.

24 So both the plaintiff and the defense --
25 the defendant in this case are marijuana-selling 08:35:09

1 companies; is that right?

2 A. And materials, yeah.

3 Q. And material --

4 A. So one of them primarily sells the paper
5 that, I guess, you roll weed in. 08:35:18

6 Q. And what were you retained to do?

7 A. There are plenty of market research
8 reports that describe the behavior of users and
9 potential users of these products.

10 And the question was whether and to what 08:35:40
11 extent customers in this industry exercise care in
12 selecting what products they purchase.

13 Q. And for purposes of your assignment in
14 that case, you went ahead and observed customers of
15 cannabis dispensaries; is that correct? 08:36:05

16 A. Not really. I --

17 Q. You didn't do that?

18 A. Wait. So I -- I didn't do that for the
19 purpose of providing my opinion. So that's your
20 question. The answer is no. 08:36:19

21 What I did is I analyzed the data in the
22 reports. And I also described going to dispensaries
23 and observing customers, not for the purpose of
24 forming a -- my opinion, but for the purpose of
25 making sure that I understand how this industry 08:36:35

1 works. None of my opinions is actually based on the
2 casual observation in six dispensaries.

3 Q. Did you conduct a survey?

4 A. I did not, as I testified earlier.

5 Q. Do you know what claims Plaintiffs are 08:36:52
6 asserting against Google in this case?

7 A. Are you asking whether I read the
8 Complaint?

9 Q. I'm asking whether or not you know what
10 claims are being asserted against Google in this 08:37:05
11 case.

12 A. I think I do to the extent they're
13 represented in the Complaint.

14 Q. Okay. What do you understand the claims
15 to be? 08:37:13

16 A. I think the -- the -- the claims have to
17 do with users not correctly understanding what
18 incognito mode does.

19 Q. Anything else?

20 A. No, not that I can think of. 08:37:33

21 Q. Have you ever testified as an expert
22 witness in any case involving a claim under the
23 Federal Wiretap Act [verbatim]?

24 A. I have not.

25 Q. Have you ever testified as an expert 08:37:52

1 witness in any case involving a claim under the
2 California Invasion of Privacy Act?

3 A. No, I did not.

4 Q. Have you ever testified as an expert
5 witness in any case involving a claim under the 08:38:04
6 Comprehensive Computer Data Access and Fraud Act?

7 A. No, I did not.

8 Q. Have you ever testified as an expert
9 witness in any case involving a claim for invasion
10 of privacy? 08:38:19

11 A. No.

12 Q. Have you ever testified as an expert
13 witness in any case involving a claim for intrusion
14 upon seclusion?

15 A. No. 08:38:28

16 Q. Have you ever testified as an expert
17 witness in any case involving a claim for breach of
18 contract?

19 A. I think not.

20 Q. Have you ever testified as an expert 08:38:43
21 witness in any case involving a claim under
22 California Business and Professions Code Section
23 17200?

24 A. I'm not sure. I think not, but I'm not
25 sure. I don't know what that section is. 08:38:58

1 Q. Have you ever published any papers dealing
2 with online privacy?

3 A. I have not.

4 Q. Have you ever published any papers dealing
5 with privacy policies? 08:39:10

6 A. I have not.

7 Q. Have you ever published any papers dealing
8 with privacy disclosures?

9 A. I have not.

10 Q. Have you ever published any papers dealing 08:39:19
11 with the issue of consumer consent?

12 MS. OLSON: Objection. Vague.

13 THE WITNESS: I don't think directly.

14 BY MR. REBLITZ-RICHARDSON:

15 Q. Indirectly? 08:39:36

16 A. I mean, it depends what you mean by
17 "consumer consent." I -- I publish many papers
18 including various consumer decision-making where you
19 expose consumers to stimuli, often from companies.

20 So depending on what you think is consent, maybe. 08:39:55

21 Q. Do you have an understanding of what
22 consent is?

23 A. I have a lay understanding of what consent
24 is. I certainly do not have a legal understanding
25 what consent is. 08:40:12

1 Q. What is your lay understanding of consent?

2 A. When I give consent to something,

3 hopefully, people understand that I agree to some

4 condition or proposition that I conceded to.

5 Q. Have you published any papers dealing with 08:40:28
6 consumer web browser preferences?

7 A. Preferences between browsers, no.

8 Q. Have you published any papers regarding
9 Chrome Incognito mode?

10 A. I have not. 08:40:45

11 Q. Have you published any papers dealing with
12 private browsing?

13 A. I have not.

14 Q. Are you claiming any privacy expertise?

15 A. I do not. 08:40:52

16 Q. Has any court ever certified you as a
17 privacy expert?

18 A. I sure hope not.

19 Q. Has any court ever certified you as an
20 expert in connection with any privacy issues? 08:41:03

21 MS. OLSON: Objection to the form.

22 THE WITNESS: Not that I know.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. Has any court ever certified you as a
25 survey expert? 08:41:16

1 A. I don't know what you mean by that.

2 Q. Have you ever had a court certify you as
3 an expert on anything?

4 A. I don't know what you mean by that
5 question. 08:41:27

6 Q. You've never had the process where a court
7 evaluates your credentials and assesses whether or
8 not you're an expert on any topic?

9 A. As I said, the -- the San Diego Credit
10 Union case, the four -- first -- first four counts 08:41:41
11 in -- in the issue, the court used my expert report
12 and survey to come to a -- an opinion that was
13 consistent with my recommendations.

14 So I don't know if it means that the court
15 certified me as an expert or not, but they certainly 08:42:01
16 followed my recommendations.

17 Q. Apart from the San Diego County case, can
18 you identify any case where any court, in your
19 words, followed your recommendations?

20 A. None of these cases actually made it to 08:42:18
21 court with my -- most -- you know, most of these
22 settled or used my report. But I didn't testify.

23 So, for example, Town of Apple Valley --
24 of Apple Valley, the court accepted my report as an
25 expert. They saved me as a rebuttal witness for 08:42:41

1 what it means. And it wasn't needed because the
2 court ruled in favor of the water company.

3 Q. In this case, are you offering any
4 opinions concerning whether Google acted
5 intentionally? 08:43:03

6 MS. OLSON: Objection to the form.

7 THE WITNESS: I believe in my report,
8 there's a section that I make the opinion that given
9 that, you know, basic marketing principles,
10 companies should do well by doing good. Google has 08:43:22
11 done many things intentionally in order to provide a
12 good product.

13 Do you mean that?

14 BY MR. REBLITZ-RICHARDSON:

15 Q. No. 08:43:32
16 Do you understand that one of the issues
17 in this case is whether or not Google acted
18 intentionally when it collected private browsing
19 data?

20 A. I don't think it was part of my assignment 08:43:43
21 to opine on that.

22 Q. So just so to be clear, it wasn't part of
23 your assignment to opine on whether Google acted
24 intentionally when it collected private browsing
25 data; is that right? 08:44:01

1 A. I think I specify exactly what my
2 assignment was in my report, and it -- and it -- my
3 assignment did not include any conclusions about
4 what Google did.

5 My assignment was primarily focused on how 08:44:11
6 users and potential users understand, perceive, and
7 choose which browser to use.

8 Q. In this case, are you offering any
9 opinions concerning whether Google intercepted any
10 private browsing communications? 08:44:29

11 MS. OLSON: Objection to the form.

12 THE WITNESS: I don't -- I don't believe
13 I've used the word "intercepted" in any of my
14 studies. I use the term -- when it asks for
15 people's understanding, I use the term whether 08:44:46
16 Google receives data or not, and I think that's the
17 closest.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. Professor, you understand that Plaintiffs
20 are asserting certain claims in this case; right? 08:44:58

21 A. Yes.

22 Q. And you understand that Google is
23 asserting certain defenses; correct?

24 A. Yes.

25 Q. Do your opinions in this case relate to 08:45:07

1 any specific claims that Plaintiffs are asserting?

2 A. I believe they are.

3 Q. Okay. Which ones?

4 A. I believe that my opinions relates to
5 whether and to what extent people understand what 08:45:26
6 private browsing in the Chrome browser does or
7 doesn't do with respect to various entities and
8 various types of information.

9 And specifically, in study 2, whether
10 Google receives different types of information. And 08:45:48
11 in study 3, whether the language on the incognito
12 splash screen is -- had it been different, would
13 have affected consumer behavior.

14 Q. Those are the three studies detailed in
15 your first report; correct? 08:46:11

16 A. Yes.

17 Q. Professor Amir, have you ever used any
18 private browsing mode?

19 A. Yes.

20 Q. Which ones? 08:46:17

21 A. I've used both Google Chrome Incognito and
22 the Safari private browsing mode.

23 Q. Any others?

24 A. Not that I remember. But if you ask me
25 about five years, maybe. 08:46:31

1 Q. When did you last use incognito mode?

2 A. I last used incognito mode about a month

3 ago when I was traveling abroad and I had to log

4 into from a public computer, and I wanted to check

5 my bank statement. 08:46:50

6 Q. And when did you last use Safari private

7 browsing mode?

8 A. I believe the "when" is difficult. Maybe

9 three or four months ago when my daughter's school

10 changed their system, and I couldn't log in. And 08:47:06

11 the IT person asked me to use Inc- -- the private --

12 the private browsing mode so that past information

13 that may have -- be -- may have been stored on my

14 device doesn't interfere with the login process.

15 Q. Professor Amir, do you know what 08:47:26

16 information Google collects when you're in incognito

17 mode?

18 MS. OLSON: Objection to the form.

19 THE WITNESS: I certainly know some.

20 BY MR. REBLITZ-RICHARDSON: 08:47:38

21 Q. What do you know?

22 A. I also don't understand exactly what you

23 mean by "Google collects." Can you specify, what

24 does that mean?

25 Q. What is it that's unclear about Google 08:47:48

1 collecting information?

2 A. Well, there is information collected
3 during the session that I -- that I use, that is
4 then removed when I close the browser at the end of
5 the session.

08:48:05

6 And there's information being collected or
7 received -- sorry -- there's -- the information, I
8 don't know where they -- whether they collect it or
9 not. But it's information received by various
10 third-party entities when I log in to different
11 websites.

08:48:19

12 Q. I'm going to make sure I understand. So
13 it's your testimony that when you're in incognito
14 mode, Google collects certain information during
15 that browsing that is then removed; is that correct?

08:48:34

16 A. No, that's not what I said.

17 MS. OLSON: Sorry. I meant to -- I
18 accidentally was on mute, but I meant to interpose
19 an objection.

20 BY MR. REBLITZ-RICHARDSON:

08:48:47

21 Q. Okay. Can you explain to me again what
22 you understand to happen when you're in incognito
23 mode in terms of Google collecting information?

24 A. But first, you understand I'm not an
25 expert on -- in this case on any computer science.

08:48:57

1 So I'm providing you my lay understanding as a user;
2 right? Is that --

3 Q. Okay.

4 A. Okay.

5 So as a user, I understand that if I use 08:49:11
6 incognito mode, then certain types of
7 information's -- of information are -- are stored on
8 my device only temporarily. And when I close the
9 session, those would disappear.

10 This is the reason I use incognito mode to 08:49:28
11 access my finances on a public computer abroad. I
12 did not want anybody to have using that machine
13 after me to have traces of my finances.

14 And I also understand that when I use the
15 internet in general, then third-party -- various 08:49:48
16 third-party players receive certain types of
17 information from my browsing session.

18 Q. And if you know, when you are using
19 incognito mode, can you stop Google from collecting
20 that private browsing information? 08:50:17

21 MS. OLSON: Objection to the form.

22 THE WITNESS: I think you're also
23 restating my testimony. Let -- let me just be
24 clear. I do not know what "collected" means. I
25 know that information is received. If an algorithm 08:50:30

1 goes and crunches that information and then throws
2 away the rest, then it might no be collected.

3 So I'll tell you what I think I know, and
4 that is that different third parties receive some of
5 my browsing information. For example, if I use 08:50:47
6 incognito and go to Amazon, Amazon knows I'm there.
7 So Amazon knows what I looked at. Or, you know,
8 what -- what this user using incognito looked at and
9 what this user might have purchased.

10 And if I'm not clever enough, and I 08:51:05
11 actually, in incognito mode, log in to my Amazon
12 account, then Amazon knows exactly who I am, despite
13 incognito mode because I -- I just logged into my
14 account and told them who I was.

15 So, yes, there -- you know, third-party 08:51:24
16 members receive information. I also imagine that my
17 internet service provider can look at traffic going
18 through its servers and -- and -- and -- and see
19 information.

20 BY MR. REBLITZ-RICHARDSON: 08:51:43

21 Q. I just want to make sure I understand.
22 You don't know what "collect" means; is that right?

23 A. I don't know what you mean when you ask me
24 about collect. And I didn't study anything in this
25 case about data collection. 08:51:54

1 Q. You didn't study anything in this case
2 regarding Google's collection?

3 A. "Data collection," I said.

4 Q. Did you study anything in this case
5 regarding Google's collection? 08:52:04

6 A. I don't know what you mean by
7 "collection." I -- I -- I said exactly. I said I
8 studied what people perceive, what entities receive
9 their data. And then I studied what types of data
10 users think Google receives. 08:52:20

11 And I did not use the term "collect"
12 because "collect" is -- is a term that's downstream.
13 I focused on what kind of data is received by
14 different parties, including Google.

15 Q. I -- I need you to under- -- explain to me 08:52:39
16 what you understand the difference between collect
17 and receive to be.

18 A. I -- I tried. I'll try again. If I
19 receive information that goes into a realtime
20 algorithm, that creates KPIs, key performance 08:52:55
21 indicators, and then I throw that data away, then I
22 receive data, and I didn't collect it.

23 For example, if my algorithm is supposed
24 to show you the next ad, so I could have an
25 ad-related algorithm that receives information, 08:53:12

1 process it, and did not save it.

2 When I think of data collection, when I
3 collect data, I save it. That means I can come back
4 to it in the future.

5 That's how I interpret your question when 08:53:27
6 you -- when you say "collect." I didn't study
7 whether information is collected in this particular
8 case.

9 Q. So, in your opinion, "collect" means save;
10 is that correct? 08:53:43

11 A. That's how I think about data.

12 Q. And "receive" means maybe save, maybe
13 don't save; is that correct?

14 A. Receive is have access to. What you do
15 with it is, you know, kind of different from 08:53:53
16 receive.

17 Q. So receive has nothing to do with what you
18 do with the data; is that correct?

19 A. No. I just -- I just explained an example
20 that you could do with the data something upon 08:54:05
21 receiving, but that doesn't require collecting. So
22 nothing is a wrong description of my testimony.

23 Q. If someone receives data, are they saving
24 that data?

25 A. They don't have to. 08:54:23

1 Q. If someone receives data, are they using
2 that data?

3 A. They can.

4 Q. But they don't have to?

5 A. They don't have to. 08:54:28

6 Q. If someone collects data, it's your
7 opinion that that involves saving data; is that
8 right?

9 A. I -- that's my interpretation of
10 collection. But again, this is my lay 08:54:37
11 interpretation of -- you know, of the English
12 language. Collecting means storing, and receiving
13 does not necessarily mean storing.

14 Q. And so, you studied receiving, not
15 collecting; is that right? 08:54:54

16 A. Yes.

17 Q. And if you know, from your experience as a
18 user, can you have Google delete all of the
19 information that Google received from your private
20 browsing? 08:55:08

21 MS. OLSON: Objection to the form.

22 THE WITNESS: Yeah, I'm not sure I
23 understand that. As I said, I think that when I use
24 private browsing using Chrome, the information of my
25 session, when I close the browser, is not stored on 08:55:19

1 my local machine, which is why I used it when I was
2 abroad on a public machine. And that's what was
3 important to me as a user.

4 BY MR. REBLITZ-RICHARDSON:

5 Q. So when you use incognito, and close 08:55:35
6 incognito, it's your understanding that the
7 information is not stored on your local machine; is
8 that right?

9 A. That's my understanding.

10 Q. What about Google servers, not on your 08:55:48
11 local machine, but Google servers?

12 A. I don't know. But what -- what's
13 important here is what I studied is what -- how
14 users and potential users understand this and what
15 do they think about it. 08:56:02

16 Q. Okay. Do you know someone named Dan
17 Ariely?

18 A. Yes, I do.

19 Q. For a time, was Dr. Ariely your advisor?

20 A. He was one of my two advisors. 08:56:18

21 Q. Have you coauthored research papers with
22 Dr. Ariely?

23 A. I think it's obvious from my CV that I
24 have.

25 Q. The answer is "yes"? 08:56:24

1 A. Yes.

2 Q. Yes, you have coauthored research papers
3 with Dr. Ariely?

4 A. Yes.

5 Q. How many papers have you coauthored with 08:56:31
6 Dr. Ariely?

7 A. Five or six, maybe. I can count, if you
8 want.

9 Q. In 2008, did you publish an article
10 coauthored with Dr. Ariely titled "The Dishonesty of 08:56:43
11 Honest People: A Theory of Self-Concept
12 Maintenance"?

13 A. Yes, I did.

14 Q. Was that your first home run paper?

15 A. Define "home run paper." 08:56:54

16 Q. Have you written that that was your first
17 home run paper?

18 A. I may have at some interview with a
19 reporter.

20 Q. Was it a home run paper for you? 08:57:04

21 A. I think it still is a home run paper.

22 Q. Among of all of your published articles,
23 is that your favorite article?

24 A. It's one of my favorite articles.

25 Q. It's not your favorite. It's just one of 08:57:18

1 them?

2 A. You know, time passes. It -- it was in
3 2008. I've done things recently that I think I'm
4 proud of. So I don't know if it's the. It's one of
5 my favorite papers.

08:57:32

6 Q. Currently, it's not your favorite article;
7 is that right?

8 A. I believe I have answered this. I don't
9 have a single favorite article.

10 Q. Are you aware that Dr. Ariely has been
11 accused of using fraudulent data?

08:57:42

12 A. Of course.

13 Q. Are you aware that members of a research
14 group who worked with Dr. Ariely have admitted the
15 data in their study was fab- -- fabricated?

08:57:52

16 A. I think you're talking about one
17 particular paper, and I'm very much aware of that
18 paper.

19 Q. And in connection with that paper, are you
20 aware that the research group who worked with
21 Dr. Ariely have admitted that the data was
22 fabricated?

08:58:04

23 A. You mean the research group, you mean
24 coauthored?

25 Q. Yes.

08:58:15

1 A. Yes, of course.

2 Q. You -- you're aware that Dr. Ariely's
3 coauthors have admitted that their data was based on
4 fabricated data; correct?

5 A. So I -- I'm aware because I read like 08:58:24
6 everybody else, all the reports that one study that
7 they have conducted, a field experiment that was
8 supposed to be run with an insurance company, I
9 believe, had fabricated data.

10 Q. Are you aware that there was a replication 08:58:43
11 attempt in connection with your 2008 Dishonesty
12 paper that you coauthored with Dr. Ariely?

13 A. Certainly. I participated in that.

14 Q. Are you aware that replication attempt was
15 unsuccessful? 08:58:57

16 A. Yes. And let me tell you about that.

17 There was a protocol for that --

18 Q. You understand, Professor Amir, that I
19 have a limited amount of time today, and that your
20 counsel will have an opportunity to ask any 08:59:09
21 questions she wants. Do you understand --

22 MS. OLSON: No, no. Beko, he gets to
23 repeat -- he gets to answer his questions, and
24 you -- you can't interrupt. Please let him answer.

25 BY MR. REBLITZ-RICHARDSON: 08:59:22

1 Q. Are you aware that replication attempt was
2 unsuccessful --

3 MS. OLSON: Please let him finish his
4 answer. He wasn't done.

5 THE WITNESS: I can ask -- go ahead and 08:59:28
6 ask your question.

7 BY MR. REBLITZ-RICHARDSON:

8 Q. Are you aware that replication attempt was
9 unsuccessful?

10 A. I'm aware that that's what's reported in 08:59:34
11 the replication paper that was published. I have
12 correspondence with the authors of that and the
13 editor of that suggesting -- showing that we found
14 errors in the replication attempt protocol precisely
15 showing that the study run before us that was not 08:59:53
16 related to our paper, that condition that
17 participants were in predict behavior in our
18 replicated attempt -- attempt to replicate
19 experiment.

20 And so, we are now in process of clearing 09:00:06
21 that up and showing that the replication attempt was
22 faulty. In addition to that, I have run a
23 preregistered rep- -- the exact replication here in
24 the lab, well-powered replication, that replicated
25 the 2000- -- actually, the data -- the data is from 09:00:24

1 2002. That was published in the 2008 paper. That
2 was Study 1.

3 There is no issue with replicating the
4 rest of the studies from that paper. And about more
5 than a thousand papers have replicated conceptually 09:00:37
6 that -- that paper. And so, I'm not really worried
7 about that theory being incorrect.

8 Q. Can honest people be dishonest?

9 A. Say that again, sorry.

10 Q. Can honest people be dishonest? 09:00:53

11 A. I think that's the point of the paper,
12 that people can be dishonest up to a point while
13 still viewing themselves as honest people.

14 Q. Were you honest in conducting the research
15 presented in your reports in this case? 09:01:07

16 A. Very much so.

17 Q. Were you honest in your critiques of
18 Mr. Keegan's work?

19 A. Very much so. And let me -- let me just
20 add that everything that I've reported and written 09:01:18
21 was not only based on facts and all the facts. But
22 also, I had a team with me to make sure that I
23 didn't, you know -- that I -- that I didn't miss
24 anything while presenting all the evidence.

25 THE COURT REPORTER: This is the court 09:01:47

1 reporter. I'm going to request a break soon,
2 please. Thank you.

3 MR. REBLITZ-RICHARDSON: Okay. We can
4 take a break now.

5 THE VIDEOGRAPHER: Going off the record. 09:01:55
6 The time is 9:01 a.m.

7 (Short recess taken.)

8 THE VIDEOGRAPHER: Back on the record, the
9 time is 9:08 a.m.

10 BY MR. REBLITZ-RICHARDSON: 09:09:07

11 Q. Professor Amir, would you, please, look at
12 Amir Exhibit 1, and let me know when you have that
13 in front of you.

14 A. Give me a second.

15 I have it in front of me. 09:09:18

16 Q. Good. Amir Exhibit 1 discusses three
17 surveys; correct?

18 A. Yes.

19 Q. And that first is the Consumer Perceptions
20 Expectations Survey; is that right? 09:09:29

21 A. Yes.

22 Q. And the second is the Interpretation
23 Survey; is that right?

24 A. Yes.

25 Q. And the third is the Likelihood of Use 09:09:35

1 Survey; is that right?

2 A. Yes.

3 Q. Is it okay if I refer to those as the
4 first, second, and third surveys?

5 A. Yes.

09:09:44

6 Q. Thank you.

7 Who created the questions included in
8 those three surveys?

9 A. I did.

10 Q. Did Google's counsel offer any suggestions
11 on any of those survey questions?

09:09:52

12 A. Not on the survey questions, no.

13 Q. And did you make any changes to any survey
14 question based on input from Google's counsel?

15 MS. OLSON: Beko, I think this might go
16 against the expert stipulation in this case.

09:10:11

17 MR. REBLITZ-RICHARDSON: Are you objecting
18 and instructing him not to answer, or are you asking
19 a question? I'm -- my question is, did he make any
20 changes to any survey question based on input from
21 Google's counsel; yes or no?

09:10:32

22 MS. OLSON: Yes, I am instructing him not
23 to answer. I think this is an improper question
24 based on the expert stipulation.

25 (Record marked.)

09:10:42

1 BY MR. REBLITZ-RICHARDSON:

2 Q. Professor Amir, are you going to follow
3 your counsel's instruction and not answer that
4 question?

5 A. Of course.

09:10:45

6 Q. Did you do any survey pretesting?

7 A. Yes.

8 Q. What is survey pretesting?

9 A. Survey pretesting is -- is part of best
10 practices for a survey. It's intended to make sure
11 that your survey is error free and clear and does
12 what you hope your survey will do.

09:10:54

13 And in particular, the way I did it here
14 is, I had a number of people from the relevant
15 respondent population going through the survey while
16 speaking out loud with a third-party observer that
17 wasn't aware of the goals of this survey to try to
18 catch any issues. Such as, for example, if I want
19 them to be able to magnify an image and they can't
20 do it and to see that the -- the language makes
21 sense and people understand the questions.

09:11:21

22 Q. Is survey pretesting required?

23 A. In best practices world, it is required.

24 Q. Is it a matter of researcher discretion
25 whether to conduct survey pretesting?

09:12:00

1 A. Anything to do with surveys is a matter of
2 researcher discretion. You can easily choose to do
3 a bad survey or not follow best practices, or you
4 can choose not to.

5 Q. Is survey pretesting a matter of 09:12:16
6 researcher discretion?

7 A. As I said, any matter of survey work is a
8 researcher discretion, but you can do a better or
9 worse job doing it. And that's why there are some
10 standards that have been agreed upon as best 09:12:25
practices to try to help researchers avoid the
11 pitfalls of mistakes and issues with the survey and
12 other potential problems.

14 Q. Did you re- -- refine any of your surveys
15 based on pretesting? 09:12:42

16 A. I think I describe in my report that at
17 least in one survey, there were issues with the
18 image, being able to magnify it, which required
19 refinement. But I don't think I had questions that
20 were unclear and needed correction. But it's all 09:13:02
stated in my reports in the appendix.

22 Q. Are you referring to Appendix E, "Pretest
23 Summary"?

24 A. Yeah, but I think also mention, either in
25 the report or footnote, whether I changed anything 09:13:17

1 or not.

2 Q. Have you produced the survey questions
3 used during your pretesting?

4 A. I believe I didn't change the questions
5 themselves to a degree. But everything is described 09:13:30
6 in the report. If I did, it's described. But I
7 produced exactly the questions that were in the
8 actual survey. They were very close. It might have
9 been small changes. If you want, I can go find the
10 spot in the report, where I discussed that. 09:13:48

11 Q. Are you referring to footnote 13?

12 A. Let me go to footnote 13. I don't
13 remember the footnote numbers by heart.

14 Footnote 13.

15 Q. On page 8, discussing pretesting; do you 09:14:11
16 see that?

17 A. Yep, yep. And I say, in response to
18 confusion about whether the hyperlink worked, I
19 added a pop-up text. Yes, that's what I'm referring
20 to. That means that the questions themselves are 09:14:23
21 pretty -- they're -- they're identical to what was
22 in the pretest. But I changed this functionality.
23 I added the pop-up and the instruction, "please drag
24 the image to scroll," so it's clear to respondents
25 what they can and can't do. 09:14:43

1 Q. So in footnote 13 of your report, you
2 state, "Based on the results of pretesting, which
3 are shown in more detail in Appendix E, I was able
4 to refine each of my surveys."

5 Do you see that? 09:14:57

6 A. Yes.

7 Q. So you made changes to each of your
8 surveys based on the pretesting; is that right?

9 A. Maybe. I -- detailed here in the -- in
10 this second part of footnote 13, a specific change 09:15:09
11 that I made.

12 Q. Professor Amir, you state in your report,
13 "I was able to refine each of my surveys."

14 Do you see that?

15 A. Yeah, I said I was able to refine each of 09:15:22
16 my survey.

17 Q. Did you refine each of your surveys?

18 A. As I said, I refined what's detailed here.
19 I don't believe I needed to refine the other two
20 surveys. 09:15:36

21 Q. You don't believe --

22 A. The third survey. This hyperlink with a
23 "learn more" appeared in all three surveys. And I
24 think that's what this refers to.

25 Q. Professor Amir, were there no changes to 09:15:50

1 your three surveys based on pretesting, other than
2 what's described in footnote 13?

3 A. I believe that I described exactly what
4 needed to be changed. And that means there were
5 changes to the three surveys. Do you mean there 09:16:08
6 were no other changes?

7 Q. Correct. Are -- is it your testimony that
8 there are no changes to your three surveys, other
9 than the changes described in the second part of
10 footnote 13? 09:16:22

11 A. I believe that's true.

12 Q. And have you produced anything backing
13 that up?

14 A. I produced the surveys, and I produced
15 the -- the pretest result, if I'm not mistaken. 09:16:34

16 Q. Did you produce what was shown as part of
17 the pretesting?

18 A. As I said -- so you -- you could -- I
19 produced -- as the best practice, I produced a
20 survey that I -- that I administered that 09:16:51
21 respondents actually saw and generated the data
22 reported in the report. I also produced, if I'm
23 going to scroll down to it, give me a second, the
24 right appendix.

25 Q. Appendix E; right? 09:17:11

1 A. Yeah, yeah. There are many appendixes.

2 I also produced the actual summary of the
3 pretest, and it did not yield any requirement to
4 change things other than what I wrote, I think. But
5 let me just verify.

09:17:38

6 Summary of pretests. Yeah, it gives a
7 detail of -- of the responses in the pretests were
8 [verbatim]. And the conclusion I had was that
9 change to the hyperlink functionality was necessary,
10 and the change to the instruction that it can drag
11 the image if needed was necessary. I believe that
12 no other changes resulted from my pretests.

09:18:07

13 Q. So it's your testimony that no changes
14 resulted to any of your three surveys, other than
15 what's described in footnote 13; is that correct?

09:18:27

16 A. Yes.

17 MS. OLSON: Objection. Asked and
18 answered.

19 Go ahead.

20 BY MR. REBLITZ-RICHARDSON:

09:18:33

21 Q. And have you provided the questions used
22 during your pretesting?

23 A. So now -- now I'm not sure I understand
24 your question. I -- Appendix E describes the
25 questions, the follow-up questions used in the

09:18:51

1 pretests.

2 Q. Right. But it doesn't describe the
3 questions that were presented as part of the survey;
4 right?

5 A. So, the survey, other than the changes I 09:19:00
6 mentioned, is the same. And so, effectively, it
7 does show the questions other than this change that
8 I describe in footnote 13.

9 Q. Right. But we don't actually have what
10 you showed your survey pretesters, do we? 09:19:13

11 A. We don't have the -- the page that had --
12 without the pop-up and without the -- the additional
13 instruction for the drag, we don't have that. But
14 you can imagine exactly what it looks like. The
15 pop-up only happens when you scroll onto it. So in 09:19:34
16 a -- in a printed report it looks exactly the same
17 as we have here. And we have an added instruction
18 that you can drag the image, which was not there
19 prior to the pretest.

20 Q. I'm sorry if my question's not clear. 09:19:48

21 I'm just trying to clarify that it has not
22 been produced to us what was shown as part of your
23 survey of pretesting; is that correct or not?

24 MS. OLSON: Objection. Asked and
25 answered. 09:20:01

1 THE WITNESS: Again, I think I answered it
2 many times. What you see here produced is nearly
3 identical. And some of the pages are identical to
4 what was shown in the pretest. The only change that
5 would be visible in a printed version is that 09:20:19
6 drag -- the extra drag image instruction.

7 Now, but just let me -- as best practices,
8 I've never seen the actual pre-pretest survey that's
9 part of the -- of the stages of design of a survey
10 produced in these reports. 09:20:41

11 BY MR. REBLITZ-RICHARDSON:

12 Q. And similarly, you have not produced the
13 pretest survey; is that correct?

14 MS. OLSON: Objection. Asked and
15 answered. 09:20:51

16 THE WITNESS: No. I think I answered it
17 four times.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. Is it a yes or a no?

20 MS. OLSON: Same objection. 09:20:58

21 THE WITNESS: Yeah. So other than the one
22 instruction, this is what was shown.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. How many pretest respondents did you have?

25 A. If you look at Exhibit E, I've had about 09:21:07

1 30 response -- total pretests, respondents, which
2 usually means that I divided ten each per pretest
3 because you do it on one-on-one, speak out loud,
4 third-party observation. It's -- it's a -- it's an
5 involved process but very helpful.

09:21:35

6 Q. And how were those 30 people selected?

7 A. They were randomly selected from the
8 sample population or similar to the sample
9 population.

10 Q. What is the sample population?

09:21:48

11 A. Again, so I used a survey vendor called
12 Dynata with their panel, and I've asked Dynata to
13 provide ten people from their panel to do a pretest.

14 Q. Of all the surveys you've conducted, have
15 you always done pretesting?

09:22:09

16 A. Of all the surveys I've done in
17 litigation? Is that the question? Or all the
18 surveys I've ever done?

19 Q. Let's start with all surveys you've ever
20 done.

09:22:20

21 A. Not all the surveys I've ever done I've
22 pretested.

23 Q. With respect to the five surveys you've
24 previously conducted in connection with litigation,
25 have you always done pretesting?

09:22:29

1 A. Yes. I've always pretested.

2 Q. So I want to look at this Appendix E,
3 which is -- it says E-1 on the bottom.

4 Do you see that?

5 A. Yes. 09:22:41

6 Q. And so, these are notes from that
7 pretesting; is that right?

8 A. Yes.

9 Q. And would you -- note Number 2, would you,
10 please, read aloud that note Number two. 09:22:51

11 A. "One respondent had issues with the
12 hyperlink on the private browsing splash screen. A
13 second respondent had a question about what was
14 meant by Google receiving information."

15 Q. In pretesting, did you ask about Google
16 receiving information? 09:23:05

17 A. Survey 2, or the second survey as you
18 asked to refer to it, asked participants one of the
19 questions in that survey has to do with does Google
20 receive this kind of information. I think this is
21 what the stud- -- this -- this person's referring
22 to. 09:23:22

23 Q. And was any response provided to that
24 person in terms of what was meant by Google
25 receiving information? 09:23:35

1 A. No. So this is -- this pretest is not a
2 two-directional communication. We're not trying to
3 explain a third -- as I said, the third party
4 observing this doesn't even know what the survey is
5 for. They would not be able to respond to this. We 09:23:47
6 record the speak-out-loud protocol, and the person
7 responding to the question must have said, you know,
8 I'm not sure what you mean when you say that. But
9 only one person out of ten raised that question.

10 Q. Was it your decision to use the 09:24:05
11 term "receiving" as part of your surveys here?

12 A. Yes. It seemed like the -- the -- the
13 cleanest version to test. As we spoke before, it
14 gets very complicated once you move beyond the --
15 the transmission or reception of information. And I 09:24:29
16 didn't think that most lay users would be informed
17 enough or understand what is meant by downstream,
18 you know, potential terminologies. And since
19 receiving information is precursor to anything else,
20 I chose to focus on that. 09:24:51

21 Q. Did you consider using the
22 term "collecting" instead of "receiving"?

23 A. I did not because, as I said, I -- I felt
24 that -- that is way more complex and not at the
25 heart of the issue of -- as I understood it, of 09:25:11

1 what's in the case, is -- is -- is using private
2 browsing allowing information to be received.

3 Q. And so, it's your testimony that Google's
4 collection is not at the heart of this case; is that
5 right? 09:25:34

6 A. No. I said -- that's not what I said. I
7 said that in order to anything -- to do anything
8 downstream like collecting, you would first need to
9 receive the information. And trying to explain a
10 survey so that -- let me take a step back. 09:25:48

11 The biggest critique of market research is
12 garbage in/garbage out. That is if your responder
13 doesn't understand what you're asking about, they'll
14 answer something, but that something is
15 uninterpretable. And the -- and the slang of it is 09:26:06
16 garbage in/garbage out.

17 I wanted to avoid garbage in/garbage out.
18 So I wanted to come up with questions that were
19 clear for lay users such that I can trust the
20 response to mean what I think it means. 09:26:20

21 Q. So you referred to "downstream." Is
22 collecting downstream from receiving?

23 A. In my lay understanding of the world, yes.
24 One must happen before the first -- before --

25 Q. And is -- is saving downstream from 09:26:32

1 receiving?

2 A. As -- as I -- as we discussed before, I
3 view collecting as related to saving. So it has to
4 be the case. I mean, you can't save or collect or
5 do anything with the data that you don't receive. 09:26:49

6 Q. Is using downstream from receiving?

7 A. Of course. I also explained that.

8 Q. Is logging downstream from receiving?

9 A. I don't exactly know what you mean by
10 logging. But to the extent that logging is 09:27:05
registering that you received information, you had
11 to receive it in order to log it.

12 Q. Is using incognito detection bits to track
13 private browsing downstream from receiving?

14 MS. OLSON: Objection to the form. 09:27:23

15 THE WITNESS: I don't know -- exactly know
16 what you mean.

17 BY MR. REBLITZ-RICHARDSON:

18 Q. Do you know what incognito detection bits
19 are? 09:27:32

20 A. Not thoroughly.

21 Q. Do you have any understanding?

22 A. I have a vague understanding. It
23 doesn't -- doesn't feel good enough to answer a
24 question. If you want to explain what it is, I'll 09:27:40

1 try to -- to -- you know, to extrapolate and see
2 whether I think it's downstreaming from receiving or
3 not.

4 Q. What is your vague understanding of what
5 incognito detection bits are? 09:27:50

6 MS. OLSON: Objection to the form.

7 THE WITNESS: Yeah, I don't have a vague
8 understanding even.

9 BY MR. REBLITZ-RICHARDSON:

10 Q. Okay. Did any of your three surveys ask 09:27:54
11 about Google collecting private browsing data?

12 A. I believe I testified that they -- that
13 the surveys do not directly ask about collecting.
14 And I explained why.

15 Q. Did any of your three surveys ask about 09:28:10
16 Google saving private browsing data?

17 A. I believe it's exactly the same answer I
18 just gave you.

19 Q. Which is?

20 A. Which is, as I answered before, my surveys 09:28:20
21 have to do with the understanding of -- you know,
22 the survey Number 2, that we just talked about, the
23 understanding of whether Google receives
24 information. Survey Number 1 -- let me just go to
25 it so I can give you an exact answer -- asks whether 09:28:40

1 various entities -- let me go to the exact --
2 receive information or data from a private --
3 private browsing session. And my third survey has
4 to do with the likelihood of use of a browser that
5 displayed certain language on the incognito splash 09:29:23
6 screen and learn more screen.

7 Q. So your first two surveys use the
8 term "receive" or "receiving"; correct?

9 A. Yes.

10 Q. And they never used the terms "collect" or 09:29:36
11 "save" or "use." Right?

12 A. Yes, and I explained why.

13 Q. And your third survey asks about
14 likelihood of use. It doesn't even get into the
15 issues of receive or collect or save or use; right? 09:29:52
16 A. Not directly.

17 Q. Okay. Are you aware that Google
18 previously conducted studies regarding user
19 understanding in connection with private browsing?

20 A. I've certainly seen documents that 09:30:09
21 summarize what must have been studied, conducted by
22 Google or for Google, on some of these questions.

23 Q. And when designing your three surveys, did
24 you consider the work that Google previously
25 conducted regarding user understanding with private 09:30:24

1 browsing mode?

2 A. No.

3 Q. In connection with the three surveys you
4 conducted for this case, did you use an outside
5 programmer?

09:30:36

6 A. I used Dynata, the sur- -- the survey
7 provider. They also provide programming services.
8 And I used their services to do it.

9 Q. And is that why you prepared programmer
10 instructions?

09:30:55

11 A. Yes.

12 Q. And those programmer instructions are
13 Appendices F-1, F-2 and F-3; correct?

14 A. You know, as I said, I don't remember the
15 appendix name by heart. Give me a second to scroll
16 there.

09:31:05

17 This is not very conducive of scrolling.
18 One second.

19 Yes. So these appendices include
20 programmer instructions, but they also include the
21 actual survey questions.

09:31:35

22 Q. Right.

23 And so, Appendices F-1, F-2 and F-3
24 include the programmer instructions, but then
25 Appendices G-1, G-2 and G-3 include the actual

09:31:49

1 screens showed to your respondents; is that right?

2 A. Yes.

3 MS. OLSON: Objection. Compound.

4 BY MR. REBLITZ-RICHARDSON:

5 Q. Okay. Did you check whether the 09:31:57
6 programmer correctly implemented the instructions in
7 Appendices F-1, F-2 and F-3?

8 A. Yes, I did.

9 Q. Okay. And what did you discover?

10 A. I discovered that they had eventually 09:32:10
11 programmed it exactly as I requested.

12 Q. Okay. And so, the programming
13 instructions in Appendices F-1, F-2 and F-3
14 accurately described your three surveys in this
15 case; is that right? 09:32:26

16 A. Yes, that is correct.

17 Q. Have you ever programmed your own survey?

18 A. Many, many times.

19 Q. Have you ever used the Qualtrics survey
20 software program to program your own survey? 09:32:38

21 A. More than 700 times in the last four
22 years.

23 Q. When you did that, did you prepare
24 programmer instructions?

25 A. I did not. 09:32:50

1 Q. You don't create a set of programmer
2 instructions for yourself, do you?

3 A. I don't create them for myself. When I
4 work with Ph.D. students, which is quite often, or
5 colleagues, we create a document that -- usually we 09:33:00
6 call it an outline that explains exactly what the
7 survey should do.

8 But when you program something yourself,
9 you don't usually -- especially for academic
10 purposes, you don't need more than the survey itself 09:33:12
11 to present later.

12 Q. Are you familiar with the phrase "survey
13 universe"?

14 A. Of course.

15 Q. What is survey universe? 09:33:21

16 A. Survey universe is the target population
17 for a survey.

18 Q. Is it important to select the right survey
19 universe?

20 A. It certainly is. It's best practices. 09:33:34

21 Q. Why is that?

22 A. Remember my critique about garbage
23 in/garbage out. If you ask the wrong people, their
24 opinions that they provide might not be relevant to
25 the question you were interested in. 09:33:52

1 Q. Do you agree that selection of the proper
2 universe is a crucial step?

3 A. Of course.

4 Q. In conducting a survey for litigation, is
5 it important to ensure that the appropriate 09:34:01
6 participants are represented?

7 A. It's true -- it's important for any
8 purpose of a survey. Litigation included.

9 Q. If you don't have the right survey
10 universe, the results are pointless; right? 09:34:13

11 A. They're not --

12 MS. OLSON: Objection to the form.

13 THE WITNESS: They might not be pointless,
14 but they certainly don't make your point.

15 In order to have the proper survey that 09:34:26
16 will speak to the question you're interested in, you
17 need to have the right survey universe.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. Can results be pointless if you have the
20 wrong survey universe? 09:34:37

21 A. They can be pointless.

22 Q. Do you agree that even if proper questions
23 are asked in a proper manner, if the wrong persons
24 are asked, the results are likely to be irrelevant?

25 MS. OLSON: Objection to the form. 09:34:54

1 THE WITNESS: I -- I agree with you that
2 the right survey universe is key to the -- to coming
3 up with the conclusions that would answer the
4 question you're interested in.

5 BY MR. REBLITZ-RICHARDSON: 09:35:03

6 Q. How did you define the survey universe in
7 this case?

8 A. I defined it as internet users above the
9 age of 18 who have used private browsing in the past
10 six month [verbatim] and have used some of -- you 09:35:20
11 know, the -- the browsers that are at issue or
12 mentioned in the Complaint.

13 Q. Did you have a different survey universe
14 for your pretesting?

15 A. I did not. 09:35:40

16 Q. Did you have a different sur- -- survey
17 universe for each of your three surveys?

18 A. I did not.

19 Q. It was the same survey universe for all
20 three of your surveys; is that correct? 09:35:54

21 A. I believe that's correct.

22 Q. What part of your report explains what the
23 survey universe was that you used for each of your
24 three surveys?

25 A. So Appendix -- Appendices F 1, 2, and 3 09:36:10

1 detailed the criteria set and the screening
2 questions used to get there.

3 Let me scroll back up where I describe the
4 actual surveys.

5 Yeah, I believe -- I believe the details 09:36:47
6 are in Appendices F.1, F.2, and F.3.

7 Q. And in Appendices F.1, F.2, and F.3, you
8 describe how you qualified respondents to
9 participate in your three surveys; correct?

10 A. Yes. 09:37:15

11 Q. And did you use the same qualification
12 questions for all three surveys?

13 A. I believe so.

14 (Simultaneous speaking.)

15 (Interruption in audio/video.) 09:37:20

16 BY MR. REBLITZ-RICHARDSON:

17 Q. And for all three of -- sorry, were you
18 done?

19 A. I just said it's been a while. I believe
20 that I used the same questions for all three. 09:37:28

21 Q. And for all three surveys, Question 5
22 asked whether the respondent or any member of their
23 household had ever worked for certain types of
24 companies; is that correct?

25 A. Yes, that's correct. 09:37:43

1 Q. If someone checked that they or a member
2 of their household had ever worked for a law firm,
3 legal services organization, or court, what
4 happened?

5 A. They did not continue to the survey. So 09:37:56
6 they're -- people like that are not included in the
7 data.

8 Q. Why not?

9 A. I think it's best practice in almost every
10 survey work for lawsuits that I've seen because 09:38:11
11 these people might understand the -- the -- and --
12 and maybe empathize with a specific side of -- of
13 legal cases.

14 And so you -- there's -- you suspect these
15 people might not have an -- an objective, unbiassed 09:38:34
16 response to questions in the survey.

17 Q. And -- and your -- your goal in not
18 including them is to omit people who might have an
19 objective unbias -- who might not have an objective,
20 unbiassed response to the questions; is that right? 09:38:54

21 A. Yeah. So the goal was to, you know, in --
22 in the first study to get the -- the unbiassed,
23 objective perceptions and understandings and
24 expectations.

25 So -- and the second study was the -- the 09:39:06

1 same for the understandings.

2 And in the third study, it was the same
3 for likelihood of usage.

4 And so, yes, the screening questions are
5 meant to screen in the right survey universe. And 09:39:18
6 by doing that, avoid potential pitfalls. Not that I
7 believe that there are many respondents in their
8 database anyway that marked this, but it's -- this
9 is best practices.

10 Q. For any of your three surveys, did you ask 09:39:35
11 whether the respondent had ever worked for Google?

12 A. I did not ask whether they worked for
13 Google.

14 Q. Why not?

15 A. It didn't seem relevant. 09:39:46

16 Q. Have any of the respondents included in
17 your surveys ever worked for Google?

18 A. I don't know.

19 Q. Did you obtain any information from your
20 respondents that can be used to determine whether 09:40:03
21 they ever worked for Google?

22 A. No, because it doesn't seem relevant.

23 Q. Question -- for all three surveys,
24 Question 7, you asked what internet browsers the
25 person currently used; right? 09:40:15

1 A. Yes. I asked, "Thinking about devices you
2 use to browse the internet" -- I don't know what --
3 where you came up with "currently" -- oh, "do you
4 currently" -- "which internet browser do you use
5 currently use," yes.

09:40:32

6 Q. You see that in your question you asked
7 "which internet browsers do you currently use?"

8 A. Yes.

9 Q. Do you see that?

10 Did you ask all of your respondents to
11 identify which internet browsers they currently used
12 at the time they took the survey?

13 A. Yes.

14 Q. And why did you limit that question to
15 current usage?

09:40:50

16 A. This -- this is not a choose one question.
17 And this is, again -- so let me -- let me go a step
18 back.

19 In these questions -- type of questions,
20 what you really worry about, as we talked about, is
21 potential bias, but you also worry about recall
22 biases.

09:41:07

23 So if I ask you which browser you used,
24 you know, Tuesday last year, the -- the response is
25 not going to be reliable.

09:41:20

1 So asking people what browsers they
2 currently use is, you know, standard practice to get
3 a reliable response.

4 Q. Is it your testimony that asking a person
5 what browsers they used last year would necessarily
6 be unreliable? 09:41:35

7 MS. OLSON: Objection. Misstates the
8 testimony.

9 THE WITNESS: Yeah, I said on a Tuesday,
10 specific Tuesday last year, that would probably be 09:41:45
11 unreliable. And by "last year," I mean a year ago.

12 Yes, as -- as the more time passes between
13 now and the past, the less reliable the response is.
14 There are a lot of studies that show that.

15 It's best practice, for example, instead 09:42:02
16 of telling -- of asking you which foods did you eat
17 last week, which is -- even -- even that is going to
18 be not easy to answer, if I asked you which food did
19 you eat yesterday, it will be much more reliable.

20 BY MR. REBLITZ-RICHARDSON: 09:42:19

21 Q. So is it your testimony that you asked
22 your respondents which internet browsers they
23 currently use because you thought it would be
24 unreliable to ask them what browsers they had used
25 in the past? 09:42:31

1 A. No. I said it's more -- it's way more
2 reliable to -- to ask this question than to ask
3 about the distant past.

4 And, again, this is -- there's a reason
5 for this question, which is a little different in 09:42:46
6 the -- you know, in the different surveys. And this
7 is the question that I want -- this is the -- the
8 data that I wanted to use in order to know, for
9 example, which condition they should be in in -- in
10 the first survey. 09:43:01

11 Q. So how did you use the information
12 provided in response to Question 7 regarding the
13 browsers currently used by your respondents?

14 A. Again, so if you -- if you scroll to page
15 F.1-6 -- let me know when you get there. 09:43:18

16 Q. Yes, I'm there.

17 A. -- so it says -- this -- this study had
18 three conditions: Chrome, Safari, and Firefox.

19 And based on that response to Question 7,
20 it says, "AMONG 'GOOGLE CHROME,' 'SAFARI,' AND 09:43:35
21 'MOZILLA FIREFOX' IN QS7, IF RESPONDENTS SELECTED
22 ONLY 'GOOGLE CHROME,' ASSIGN TO THE 'CHROME' GROUP."

23 And it basically describes the entire
24 logic among Google Chrome, Safari, and Mozilla
25 Firefox. 09:43:48

1 "IN QS7, IF RESPONDENT SELECTED ONLY
2 'SAFARI'" [as read] --
3 THE COURT REPORTER: Excuse me.
4 Counsel -- excuse me. Sir, if you could slow down,
5 please. 09:43:59
6 THE WITNESS: Yeah, sorry. I apologize.
7 "AMONG 'GOOGLE CHROME,' 'SAFARI,' AND
8 'MOZILLA FIREFOX' IN QS7, IF RESPONDENT SELECTED
9 ONLY 'MOZILLA FIREFOX,' ASSIGN TO 'FIREFOX' GROUP."
10 Now, "AMONG 'GOOGLE CHROME,' 'SAFARI,' AND 09:44:13
11 'MOZILLA FIREFOX' IN QS7, IF RESPONDENT SELECTED
12 MORE THAN ONE OPTION, RANDOMIZE BROWSER GROUP AMONG
13 THE SELECTED OPTIONS." [As read]
14 "AMONG 'GOOGLE CHROME,' 'SAFARI,' AND
15 'MOZILLA FIREFOX' IN QS7, IF RESPONDENT DID NOT 09:44:23
16 SELECT ANY OPTION, RANDOMIZE BROWSER GROUP."
17 And now it shows you below that that I set
18 criteria for minimums of completes for the different
19 conditions.
20 I put more in Chrome because I felt that I 09:44:38
21 needed more -- even more reliable responses for
22 Chrome given that this is the browser at issue.
23 And then -- then there's a secondary
24 assignment, which is assigning to mobile or desktop
25 based on the current device they're using, because I 09:45:00

1 added a question that detects which type of device
2 they're logging in from.

3 And in Chrome, I wanted to make sure I had
4 representation from both. But -- but at -- at the
5 very least, I have enough respondents for the 09:45:14
6 desktop version.

7 BY MR. REBLITZ-RICHARDSON:

8 Q. Professor Amir, is it correct that the
9 page F.1-6 at the bottom describes how you used the
10 information provided in response to Question 7 to 09:45:27
11 assign people to a Chrome, Safari, or Firefox group?

12 A. Yes.

13 Q. And those were your three brow- -- browser
14 groups for Survey 1: Chrome, Safari, and Firefox;
15 correct? 09:45:46

16 A. Yes.

17 Q. For your second and third survey, did you
18 only have a Chrome group?

19 A. Let me scroll down there.

20 So in my second survey, I believe that 09:46:13
21 there are four conditions, and respondents were
22 randomly assigned to these four conditions, again,
23 either in mobile or desktop, based on the device
24 they're currently using to log in to the survey.

25 Q. Can you clarify what page you're looking 09:46:41

1 at for the record? Is --

2 A. F.2-6.

3 Q. Okay. So F.1-6 describes the use of the
4 information for groups in the first survey. And
5 F.2-6 describes the use of information for your 09:46:57
6 second survey --

7 A. Yeah.

8 Q. -- is that right?

9 A. But let me -- let me go back to your 09:47:08
10 question. When you -- when you said "only," I don't think that was accurate because in -- after the
11 study, I used data from QS7 to do sensitivity
12 analysis --

13 Q. Mm-hmm.

14 A. -- which were very informative to answer 09:47:18
15 some potential critiques and to test for reliability
16 and things like that.

17 So it's not -- I didn't only use it to
18 assign. I also used it in analysis.

19 Q. Okay. Thanks for that clarification. 09:47:34

20 But just -- just to be clear, as reflected
21 in F.1-6, you had three browser groups for your
22 first survey: Chrome, Safari, and Firefox; correct?

23 A. I had three conditions. I don't know what 09:47:49
24 browser groups is.

1 Q. Well, you say "Browser Groups" [verbatim]
2 on F.1-6 on the left side of your table.

3 A. Yeah.

4 Q. You see that?

5 A. Yeah, so those are the conditions, yes. 09:47:55

6 Q. Well, you -- you said "Browser Group";
7 right?

8 A. Yeah.

9 Q. Okay. And you have three browser
10 groups -- 09:48:01

11 A. Yeah.

12 Q. -- Chrome, Safari, and Firefox; right?

13 A. Yes.

14 Q. On the second survey, do you also have
15 three browser groups, Chrome, Safari and Firefox, or 09:48:07
16 is it just Chrome?

17 A. It's just Chrome.

18 Q. Okay. And the third survey, is it just
19 Chrome?

20 A. Whatever you say -- the second survey 09:48:19
21 is -- is -- one of the conditions -- I don't know
22 what you mean by "just Chrome"; but just to clarify,
23 one of the conditions is the Chrome Splash Screen
24 and Learn More.

25 The other conditions also show various 09:48:29

1 other text to the responders. So there's four
2 groups or --

3 Q. Right.

4 A. Mm-hmm.

5 Q. But all of those are people who clicked 09:48:37
6 that they used Chrome in response to Question 7?

7 A. No. No.

8 Q. No. Okay.

9 A. I don't think that's true.

10 Q. So Group A, B, C, and D, where -- where 09:48:47
11 are they coming from? Does it matter what they
12 clicked in response to Question 7?

13 A. It matters to the extent that they could
14 be terminated if they clicked a nonexisting browser
15 called Odeon or any combinations. So that's sort of 09:49:05
16 a qualitative trap.

17 But to the extent they clicked an existing
18 browser, they all moved to -- to respond to one of
19 four conditions.

20 Q. So Survey 2 isn't limited to Chrome users; 09:49:19
21 is that right?

22 A. Survey 2 is not limited to only Chrome
23 users.

24 Q. And what about Survey 3, is that limited
25 to Chrome users or not? 09:49:31

1 A. Let me get there just to be -- give you a
2 solid answer, but I believe the answer's very
3 similar.

4 Q. Yeah. And just let us know which page
5 you're looking at. 09:49:42

6 A. So I'm looking at F.3-4. It only
7 terminates people who have -- who click Odeon in
8 some combination. The rest continue to question
9 QS8.

10 And then, again, people are randomized to
11 one of two conditions later on and are shown to
12 desktop versus mobile. 09:50:03

13 Yeah, so the sur- -- the third survey is
14 also not only limited to people who only use Chrome.

15 Q. So your second and third surveys are not
16 limited to people who use Chrome; is that correct? 09:50:24

17 A. Yes. Neither is my first one.

18 Q. Right. And your first one has three
19 different browser groups: Chrome, Safari, and
20 Firefox; right? 09:50:38

21 A. Yes.

22 Q. But your second and third surveys don't
23 have any limited browser group; is that right?

24 A. That's right.

25 Q. Okay. Thank you. 09:50:46

1 For any of your surveys, did you create a
2 browser group of Edge users?

3 A. So, again, I don't -- I don't want to --
4 to use the wrong terminology when you say "create a
5 browser group."

09:51:01

6 Browser group in Study 1 refers to the
7 condition, the -- the stimuli that -- that
8 respondents were shown. They were either shown
9 Chrome stimuli or Safari stimuli or Firefox stimuli.

10 Given that I don't terminate people who
11 don't only use Chrome, I do have people who use Edge
12 or Internet Explorer in my studies. And in
13 sensitivity analysis subsequent, I can look and see
14 exactly what they respond.

15 So that's how I would address it. I don't
16 know what you mean by create a study group for.

17 Q. So going back to F.1-6, you've got three
18 browser groups there, Chrome, Safari, and Firefox,
19 but you don't have any browser group for Edge or
20 Internet Explorer; correct?

09:51:45

21 A. I think you --

22 MS. OLSON: Objection. Asked and
23 answered.

24 THE WITNESS: Yeah, I think you
25 misunderstand what is meant by "browser group," so

09:51:54

1 let me explain and clarify.

2 Let me just get to that page so we're all
3 looking on the same page.

4 BY MR. REBLITZ-RICHARDSON:

5 Q. Yeah, so I'm looking at F.1-6. And at the 09:52:01
6 top it says: "FIRST, ASSIGN RESPONDENT TO BROWSER
7 GROUP:"

8 Do you see that?

9 A. I see that. Hold on. I saw that. Let me
10 just go to the right page. F.1-6. 09:52:11

11 Yes.

12 So when --

13 (Simultaneous speaking.)

14 (Interruption in audio/video.)

15 THE COURT REPORTER: Wait. One second, 09:52:23
16 please. There are two people speaking, and it's
17 cancelling both of you out. Thank you.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. My only question is, do you see that?
20 I -- I -- can I ask a question, or do you want to 09:52:27
21 just talk here?

22 A. I -- I thought you asked a question, and I
23 scrolled to this page in order to answer. But you
24 can ask a question, if you want.

25 Q. So my question is, right there at the top 09:52:38

1 of F.1-6, you say "FIRST, ASSIGN RESPONDENT TO
2 BROWSER GROUP"; right?

3 A. It does say that.

4 Q. And then you have programming instructions
5 on how to assign people to the Chrome group, the 09:52:49
6 Firefox group, and the Safari group.

7 Do you see that?

8 A. Yes. I think -- I believe I read them out
9 loud before.

10 Q. Okay. You -- you did not have any 09:53:02
11 assignment to a specific Edge or Internet Explorer
12 group; correct?

13 A. In this study, that is correct. And
14 that's because this was before the -- the claim was
15 amended. 09:53:17

16 The -- and -- and when I designed the
17 study, Edge wasn't actually explicitly mentioned in
18 the claim.

19 But just to answer your previous question
20 which you've glossed over, browser group in this 09:53:30
21 first survey relate -- re- -- relates to the
22 condition, the type of stimuli respondents saw.

23 In the other studies, you asked me you
24 didn't create browser group for -- in the other
25 studies, the other studies don't have the same 09:53:50

1 design.

2 Q. Mm-hmm.

3 A. So there are no conditions that are
4 specific to certain browsers, but I can expose --
5 because of my QS7, I can create groupings of people 09:54:01
6 who use different browsers and analyze whether they
7 respond differently to the questions the survey
8 asked.

9 Q. Now -- and why would -- why did you have
10 Firefox here as -- as one of the browser groups? 09:54:18

11 A. So the goal of the study was to look at
12 the expectations and perceptions based on private
13 browsing. And so I picked Chrome both because it's
14 in the Complaint -- the main thing, in the
15 Complaint, and because it's the highest market share 09:54:40
16 browser based on third-party data, which I cite.

17 Safari was the second on desktop, and
18 Firefox was the third.

19 Q. So you included Chrome, Safari, and
20 Firefox because they had the highest market share; 09:54:55
21 is that right?

22 A. Yes, they are the most -- most used
23 browsers in the market based on -- you know,
24 consistently based on third-party data.

25 Q. And in collection -- in -- in -- in 09:55:04

1 connection with this decision, did you investigate
2 whether Google receives information when people use
3 the private browsing mode in Firefox?

4 A. This wasn't part of the assignment and
5 wasn't related to what I was trying to do. 09:55:19

6 Q. Did you discuss that with anyone?

7 A. No.

8 Q. Okay. To qualify for any of your three
9 surveys, did you require that the person had used
10 any specific private browsing mode? 09:55:30

11 A. Let's scroll up to QS8.

12 Q. Mm-hmm.

13 A. QS8 is actually an example of best
14 practices, how do you do this kind of screening in a
15 nonleading way. I suggest -- I -- I include various
16 aspects of browsers, and I asked participants, "In
17 the past six-month [verbatim], which of the
18 following features, if any, have you used in your
19 internet browsers?" [As read]. 09:55:48

20 I then only allow people to continue the
21 survey if they had clicked at least "Private
22 browsing mode" in their responses. 09:56:08

23 Q. So in order to participate in your survey,
24 someone has to have currently used a browser other
25 than Odeon and within the past six months have used 09:56:30

1 private browsing mode; is that right?

2 A. That is -- that is almost accurate. So in
3 some sense -- another way to think about it, has
4 used any of the browsers that -- that have any --
5 any decent market share in the market is using and 09:56:50
6 have -- recalls using private browsing in the last
7 six month [verbatim].

8 Q. And did you then ask the respondents to
9 identify specifically which private browsing mode or
10 modes they had used? 09:57:04

11 A. Do you mean on which browser?

12 Q. Correct.

13 A. I did not.

14 Q. Okay. Do you have any information
15 regarding specifically which private browsing mode 09:57:16
16 or modes were used by any of the respondents in your
17 surveys?

18 A. Of course I do.

19 Q. Where?

20 A. Because my sample is large enough, I can 09:57:26
21 look at people -- this is kind of what you can do in
22 the analysis. I can look at people who only marked
23 using Chrome or who only marked using Safari or, if
24 you want, only marked using Edge.

25 Given that all my sample has marked using 09:57:45

1 private browsing in the last six month [verbatim],
2 those people I know for certain which private
3 browsing they used.

4 Q. How do you know that for certain?

5 A. Because they say which browsers they used. 09:57:57
6 And if you -- if they only used Chrome and they say
7 that they have used private browsing, it needs to
8 have been in Chrome.

9 Q. What about someone who currently uses
10 Chrome, but previously used Safari and used private 09:58:10
11 browsing mode on Safari?

12 A. You know, that -- there's a possibility
13 that those people, I don't know for sure what they
14 used on.

15 Q. So you asked about current browser usage; 09:58:22
16 right?

17 A. Yes. But current doesn't mean which
18 browser are you currently logging in to the survey
19 with, because then I would only get one response.

20 When you ask people what current -- what 09:58:35
21 they currently use, that's a general question. They
22 don't take current literally. They don't respond --
23 I actually know which browser they're logging in
24 from. I don't -- so the question doesn't -- and the
25 data supports that. 09:58:49

1 The question doesn't get interpreted
2 literally. It basically -- it asks kind of
3 generally what do you currently use. And people
4 list the kind of browsers they currently use.

5 So there is some chance that somebody has 09:59:01
6 used Safari all their life until two days ago and
7 have switched to Chrome. Chances are when -- the
8 browser you currently use, they'll list both of
9 them. But there -- there is some chance that --
10 that there's a small proportion which will be 09:59:19
11 missed.

12 Q. So it's -- it's your opinion that
13 currently means recently? Is that what you're
14 testifying?

15 A. What I mean is that respondents interpret 09:59:27
16 currently not literally. They don't respond which
17 browser they're currently using to log in to the
18 survey. Because, otherwise, every respondent would
19 have responded just with one. They don't do that.

20 People who log from the desktop also say 09:59:44
21 Safari if that's what they use on their phone.
22 That's how participants in surveys interpret this
23 kind of question.

24 Q. What backup do you have for that
25 assertion, if any? 09:59:57

1 A. Data.

2 Q. From this survey?

3 A. Of course.

4 Q. Any other?

5 A. Yeah, I've run over 700 studies in the 10:00:04
6 last four years.

7 Q. And so whenever you use the word
8 "currently," it's your understanding that people
9 interpret that to mean recently?

10 A. Yeah, or -- or in general, yes. They 10:00:09
11 don't -- they -- respondents don't interpret this
12 literally most of the time. If you want the
13 literal, you have to emphasize and explain "what are
14 you using now."

15 Q. For the people who identified the browser 10:00:22
16 that they were using to conduct your survey, did you
17 follow up to clarify that they understood that
18 currently meant recently and not currently as in
19 during that survey?

20 A. I did not -- so you see the survey in 10:00:40
21 front of you. I did not follow up with any of this.
22 I do this analysis. It looks at people who use --
23 who re- -- report using a single browser exposed
24 once I have the data, not before.

25 Q. And do you have data indicating what 10:00:56

1 browser's being used to conduct the survey and
2 whether or not that corresponds to the browser they
3 selected in response to Question 7?

4 A. I'll have to look at that and see.

5 Q. So Question 7, you asked about current 10:01:08
6 browser usage; right?

7 A. And I explained it when I said you -- what
8 browsers, and I have brackets with -- you know, with
9 a plural "S." And because I have browsers --
10 browsers or -- or browser or browsers, respondents 10:01:24
11 understand that I am not asking about the browser
12 they are currently logged in now and respond with
13 multiple browsers. Most responders respond with
14 more than one browser.

15 Q. So what do you mean by "currently"? 10:01:41

16 A. And I think I explained it, but I'll
17 explain again.

18 When I ask, What browser or browsers do
19 you currently use, respondents generally understand
20 this as the set of browsers that I currently use in 10:01:55
21 my daily life, that I generally, currently use in my
22 gen- -- in my daily life, which is why they respond
23 with more than one browser, not just the browser
24 they're logged in.

25 You -- you need to work hard to get them 10:02:05

1 to understand that you want to be literal now. And
2 the fact that I have an -- a plural "S" on
3 "browsers" pretty much explains that I'm not
4 interested in the single browser that you're
5 currently logged in; otherwise, it wouldn't be 10:02:20
6 plural.

7 Q. Why did you ask about current browser
8 usage, but then ask about private browsing usage
9 over the past six months?

10 A. Well, current browser usage give 10:02:36
11 [verbatim] me the set of browsers they're using.
12 And private browsing is a rare event for most
13 people. And, therefore, you know, antic- -- you
14 know, asking people if they're currently using
15 incognito mode is not going to be specific enough. 10:02:47

16 And so, I have people try to tell me have
17 they recently used incognito mode, and I want to be
18 clear, so I define recently as in the past six month
19 [verbatim], which is, you know, not a short period,
20 but -- but a decent period for people to try to 10:03:06
21 recall a behavior that's not distinct as -- as some
22 other behavioral events in life that is incognito
23 or -- or -- sorry -- private browsing mode usage.

24 Q. What basis do you have to say that usage
25 of "private browsing mode is a rare event," other 10:03:26

1 than your own experience?

2 A. So anecdotally, my own experience. There
3 is -- Aly, can I say what's in the report for
4 attorney eye [verbatim] only?

5 MS. OLSON: Yeah, you can -- you can say 10:03:44
6 it. And we'll mark that part confidential.

7 THE WITNESS: Okay. So one of the Google
8 documents reported that the -- [REDACTED]

9 [REDACTED] 10:04:02
10 [REDACTED]

11 [REDACTED] [REDACTED]
12 [REDACTED]
13 [REDACTED]. And
14 that's the basis for my statement.

15 BY MR. REBLITZ-RICHARDSON: 10:04:20

16 Q. Any other basis for that statement?

17 A. Yeah -- yeah, I mean, you -- you know, if
18 you read the memory literature and you look at
19 events that are distinct, the death of relative, the
20 breakup, divorce, in my world view, those are a 10:04:32
21 different level than incognito mode using.

22 Q. With respect to Questions 7 and 8, if
23 someone had selected Chrome and Opera but it only
24 used private browsing mode in Opera, how did you
25 deal with that? 10:04:50

1 A. Again, so in my post-study analysis, the
2 main overall data does not deal with that directly.
3 The main overall data is -- is everyone who have
4 used these browsers and reports having used private
5 browsing mode.

10:05:09

6 In subsequent sensitivity analysis when I
7 look at Chrome-only users or Safari-only users, that
8 data does not include those people you just
9 mentioned.

10 Q. Did you ask your respondents whether they
11 had, in the past three months, taken any other
12 survey related to private browsing mode?

13 A. Let me go to the study and see how I
14 worded these post-study questions.

15 Q. I can direct you to F.1 -- F.1-15.

10:05:50

16 A. Thank you.

17 So "QF4. In the past three months, have
18 you or have you not taken any other survey related
19 to private browsing" --

20 THE COURT REPORTER: Excuse me. Sir,

10:06:10

21 could you read a little slower into the record.

22 Thank you.

23 THE WITNESS: Yes. I apologize again.

24 And QF4 states: "In the past three
25 months, have you or have you not taken any other

10:06:19

1 survey related to private browsing mode?"

2 BY MR. REBLITZ-RICHARDSON:

3 Q. Is that a question that you asked all of
4 your respondents?

5 A. Yes.

10:06:28

6 Q. Why did you ask that?

7 A. As -- as we've discussed before, I would
8 like to present results that are not potentially
9 biassed or tainted by external influences. And so,
10 I asked this question.

10:06:46

11 And then I subsequently do sensitivity
12 analysis to look at what's the difference between
13 respondents who say they did or -- or say that they
14 did not, and does omitting these responders change
15 the nature of my conclusion or impacts the results.
16 That's what sensitivity analyses do.

10:07:03

17 And in this particular case, whether
18 because the sample -- the proportion is not that
19 large or because there is no bias caused by that,
20 these respondents do not actually respond
21 differently and so omitting them or including them
22 does not change the nature of results.

10:07:19

23 Q. Did you remove respondents who had, in the
24 past three months, taken another survey related to
25 private browsing mode?

10:07:34

1 A. As I said, after conducting sensitivity
2 analysis and finding out that these respondents do
3 not respond differently, I kept them in to -- to
4 provide a more complete dataset.

5 Q. In other surveys, have you removed 10:07:46
6 participants for having taken a similar or identical
7 study beforehand?

8 A. And you mean in this case?

9 Q. Not in this case. I know in this case,
10 you did not. 10:07:59

11 A. Yeah.

12 Q. In other cases, have you removed
13 participants for having taken a similar or identical
14 study beforehand?

15 A. The best practices are to do sensitivity 10:08:07
16 analysis and test whether the -- as I said, they
17 respond differently.

18 If they respond differently, then you
19 worry about bias, and you present the results
20 without them. I don't think that I ran into a case 10:08:24
21 where that was the case. But I suspect the best
22 practices there, because some cases are so famous
23 and known such that overlap between surveys can
24 produce bias.

25 Q. Right. 10:08:40

1 And my question is just: In any other
2 study that you've conducted, have you removed
3 participants for having taken a similar or identical
4 study beforehand?

5 A. I don't think I -- 10:08:50

6 MS. OLSON: Objection. Asked and
7 answered.

8 Just want to repeat your answer? I don't
9 know if it got written down.

10 Professor Amir, will you just repeat what 10:09:03
11 you said. I -- I cut you off.

12 THE WITNESS: Yeah. Sorry.

13 I don't think I -- I have had the case
14 where that caused bias in my studies.

15 BY MR. REBLITZ-RICHARDSON: 10:09:13

16 Q. Okay. So you don't think you've had a
17 case where you've removed participants for having
18 taken a similar or identical study beforehand;
19 correct?

20 A. As far as I can remember, that's correct. 10:09:23

21 Q. How many of your respondents were people
22 who had, in the past three months, taken another
23 survey related to private browsing mode?

24 A. I don't know if I remember the number by
25 heart. Let me try to think about it. 10:09:41

1 I -- I don't remember the percentage by
2 heart. I think it was a small percentage.

3 Q. Less than 5 percent?

4 A. I don't remember.

5 Q. Less than 10 percent? 10:10:03

6 A. Again, if I say "I don't remember," then
7 you can -- I'm not going to guess.

8 Q. Would it surprise you if it was more than
9 10 percent?

10 A. I mean, it's not necessarily out of the 10:10:14
11 question because Keegan and I used the same data
12 provider, sample provider. But I know for a fact
13 that I did sensitivity analysis and it didn't change
14 the results. That's what's important.

15 Q. Professor, you stated it was a small 10:10:32
16 percentage. I'm just trying to understand is
17 that -- what do you mean by "small percentage"?

18 A. I said that I don't remember. I don't
19 remember it being a large percentage. What I know
20 for sure is that my studies excluded past 10:10:44
21 participants. So my studies do not have overlap in
22 their samples.

23 Q. So sitting here today, you don't know what
24 percentage of the respondents included in your
25 results were people who had, in the past three 10:11:01

1 months, taken another survey related to private
2 browsing mode; is that correct?

3 A. I don't remember by heart. That's what
4 I'm saying.

5 (Interruption in audio/video.) 10:11:16

6 THE COURT REPORTER: I'm sorry. You -- I
7 missed the first part of your answer. Professor,
8 please repeat.

9 THE WITNESS: Yeah. Sorry.

10 I said that I don't remember it by heart, 10:11:17
11 and I don't want to give you a wrong number because
12 I'm testifying under oath.

13 BY MR. REBLITZ-RICHARDSON:

14 Q. Do you know whether the results for all
15 three of your surveys included people who had, in 10:11:26
16 the past three months, taken another survey related
17 to private browsing mode?

18 A. I think I explained this, but I'll try
19 again.

20 When I did sensitivity analysis to see 10:11:39
21 whether people who have answered this question this
22 way responded in any different pattern than the rest
23 of the sample, and found out that they did not, in
24 fact. So if you omit them, you get pretty much the
25 same results. 10:12:01

1 I decided for completeness to include
2 those in the sample provided. And so, I know for a
3 fact that they were not removed for responding so,
4 after being -- you know, passing the sensitivity
5 test.

10:12:16

6 Q. And as part of your sensitivity test, you
7 understand that each and every one of your surveys
8 includes people who had, in fact, in the past three
9 months, taken another survey related to private
10 browsing mode; correct?

10:12:29

11 A. I don't --

12 MS. OLSON: Objection. Misstates the
13 testimony.

14 THE WITNESS: This wasn't my testimony. I
15 don't -- I said I don't remember the proportions by
16 heart. I remember testing each and every survey for
17 sensitivity. And if there were people like that,
18 because they didn't change the results, they are
19 included in the survey. That's what I testified to.

10:12:35

20 BY MR. REBLITZ-RICHARDSON:

10:12:49

21 Q. Do you know if there were those people in
22 each of your surveys?

23 A. As I said, I don't remember by heart. If
24 I knew, I would give you percentages.

25 Q. Do you know if there was at least one?

10:12:57

1 A. No.

2 Q. And you -- you don't know if any of the
3 people -- you -- you have no idea whether each of
4 your three surveys include at least one person who
5 had, in the past three months, taken another survey 10:13:08
6 related to private browsing mode?

7 A. Again, since this is not a number I
8 reported in my report, I think, I don't want to give
9 you a wrong number, and so I said "I don't
10 remember." So I'm not going to commit to any 10:13:23
11 question about the number because I want to give you
12 correct answers.

13 Q. In the -- we talked about the surveys you
14 had conducted for litigation before. In those
15 surveys, did you limit the participants to people 10:13:36
16 who had not participated in a similar study in the
17 previous month?

18 MS. OLSON: Objection. Asked and
19 answered.

20 THE WITNESS: Yeah, I don't see -- I don't 10:13:45
21 see why you would ask me the same question. I said
22 that I follow best practices, and I ask this
23 question and then I do a sensitivity analysis.

24 And what I responded before when you asked
25 me did you ever remove participants like this, and I 10:13:59

1 said, in my studies for litigation experience, I did
2 not find a case where those were materially
3 different responses, and so, I did not omit those
4 responses. I believe I said that twice already.

5 BY MR. REBLITZ-RICHARDSON: 10:14:16

6 Q. This is a different question.

7 A. So I misunderstood your question. Please
8 repeat.

9 Q. My question before was whether or not you
10 removed people from your results where they had 10:14:21
11 participated in an iden- -- in a study beforehand;
12 right?

13 A. Yes.

14 Q. My question now is in connection with your
15 litigation surveys. 10:14:32

16 Have you ever limited the participants,
17 not excluded, but limited the participants to people
18 who had not participated in a similar study
19 previously?

20 Do you understand the difference? 10:14:47

21 A. I understand.

22 You're asking whether I screened them out
23 before they responded to the survey.

24 Q. You got it.

25 A. I don't think so, but I don't remember by 10:15:02

1 heart every study that I ran, the exact screening
2 criteria.

3 Q. Now, I'm asking about the five litigation
4 surveys you've run.

5 A. Oh. 10:15:08

6 Q. Do you understand --

7 A. But you're talking about studies I've done
8 years ago, and we've already established that asking
9 for recall for a distant past is unreliable. And I
10 don't want to go there. 10:15:18

11 Q. Well, I'm just asking about the five
12 litigation studies you've conducted and whether or
13 not -- separate from whether you've removed
14 participants, is whether or not you've limited the
15 participants, screened them, to people who had not
16 participated in a similar study before. 10:15:30

17 A. And I understood your question, and I
18 responded that I don't believe I did. But that
19 because these studies were done years ago and I
20 conduct a lot of studies, I don't know that I
21 remember for sure that that's the case. 10:15:42

22 Q. And so, in this case, it's your position
23 that you conducted a sensitivity analysis regarding
24 recent survey takers; right?

25 A. Yes. 10:15:59

1 Q. And in -- and it's your opinion that based
2 on those sensitivity analyses, your results still
3 hold?

4 A. Yes.

5 Q. What does that mean, "results still hold"? 10:16:10

6 A. Well, I -- I think I -- I gave you a
7 different, more detailed answer before. But I'll --
8 I'll repeat that.

9 The people that responded in this way to
10 this question provided results that were in the same 10:16:26
11 pattern as the people who responded that have not
12 been exposed to maybe a related study. And
13 therefore, if you omit them from the analysis, or
14 include them in the analysis, the conclusions from
15 the analysis do not change. 10:16:49

16 Q. Did you produce documentation regarding
17 the sensitivity analysis that you're now describing?

18 A. I ran a lot of sensitivity analysis. I
19 don't think the -- the expert -- the report includes
20 all of them. 10:17:05

21 Q. Did you produce them?

22 A. Yeah, I don't -- I don't think that I did
23 for this question.

24 Q. How many of the respondents included in
25 your survey results have a Google account? 10:17:20

1 A. This is not a question I asked, so I don't
2 know for sure. I -- I can extrapolate based on --
3 on market shares, since this sample is pretty
4 representative, it should be the majority. But I
5 don't -- I did not ask the question.

10:17:43

6 Q. In qualifying respondents for your three
7 surveys, did you ask any of those respondents
8 whether they have a Google account?

9 A. I did not. I think that you can see in my
10 screening questions that I did not ask anything
11 about a Google account.

12 Q. Did you obtain any information from your
13 respondents that you could use to determine which of
14 those respondents have a Google account?

15 A. I don't think I have.

10:18:11

16 Q. On F.1-8 --

17 A. Don't know. F.1-8. Hold on.

18 F.1-8.

19 Q. Do you see the incognito screen there?

20 A. Yes.

10:18:32

21 Q. Did you use that incognito screen in all
22 three of your surveys?

23 A. With the exception of my third survey that
24 has a modified version, I used the same incognito
25 screen or splash screen in the three studies.

10:18:51

1 Q. And in your third study, did you modify
2 this incognito screen?

3 A. I believe that I did.

4 Q. Where did you obtain this incognito
5 screen? 10:19:04

6 A. I believe that I've asked counsel for the
7 version of incognito screen that would be the most
8 representative of that issue period.

9 And I think the answer I got was that, you
10 know, the current one is -- is a -- is a good 10:19:28
11 representation. And I used the one that was
12 active -- no, not one. Sorry. That one's a bit
13 different.

14 So I think I used the one before some
15 substantial changes were made after the -- the claim 10:19:47
16 period.

17 Q. So let me break that down.

18 You obtained this incognito screen from
19 counsel; correct?

20 MS. OLSON: Objection. Misstates the 10:20:04
21 testimony.

22 THE WITNESS: Yeah. So I've -- I've
23 looked at -- you know, I've asked my research
24 assistants at Analysis Group to bring different
25 versions of -- of incognito screen to the extent 10:20:15

1 that there were different versions.

2 And this version, I judge to be the most
3 representative of the claims period because I think
4 the -- the -- the one currently might have some
5 switch that didn't exist most of the period. And 10:20:32
6 so, I used this one.

7 BY MR. REBLITZ-RICHARDSON:

8 Q. So you looked at different versions and
9 you made the decision to use this one; is that
10 correct? 10:20:43

11 A. Yes.

12 Q. Does Google currently use this screen with
13 incognito?

14 A. I think they've made a -- as a -- as I
15 said, I think they've made a change. 10:20:50

16 Q. Okay. Do you know when Google last used
17 this screen with incognito?

18 A. I don't remember by heart.

19 Q. Had Google used this screen during the six
20 months prior to your surveys? 10:21:01

21 A. I don't know. I don't remember. I think
22 I --

23 Q. Did any of --

24 A. -- the answer --

25 (Simultaneous speaking.) 10:21:09

1 (Interruption in audio/video.)

2 BY MR. REBLITZ-RICHARDSON:

3 Q. Go ahead.

4 A. I think I knew the answer to that when I
5 chose this. I just don't remember the dates off the 10:21:13
6 top of my head.

7 Q. Okay. Did any --

8 A. But I think in my report I say which --
9 which incognito screen I use; right? I can -- if
10 you let me -- 10:21:28

11 Q. You used this one; right?

12 A. Yeah, yeah. But I -- I think in my
13 report, I -- I -- I -- it may be in a footnote that
14 I describe exactly when -- from -- from what period
15 this incognito screen is. 10:21:43

16 So I can find that point and give you an
17 exact answer. It's going to take me a bit, because
18 I can't find -- I can't search for the
19 word "incognito." That's not going to help.

20 MS. OLSON: If I might just help, and 10:22:33
21 direct you to Footnote 32. That might be what
22 you're looking for.

23 THE WITNESS: Hold on. Hold on. Maybe.

24 Yeah, okay.

25 So Footnote 32 describes the change that 10:22:50

1 was made just before the Complaint to the splash
2 screen. So I used the one prior to that change.

3 BY MR. REBLITZ-RICHARDSON:

4 Q. And so, that would have been prior to the
5 six-month period that you were asking your 10:23:10
6 respondents about; correct?

7 A. Possibly.

8 Q. Possibly or you -- you don't know?

9 A. Yeah, I think -- I think that -- I think
10 that's true. 10:23:22

11 Q. Okay. Do you think it is important to
12 make sure that your survey results are not an
13 artifact of the artificial environment that actually
14 occur in real life?

15 MS. OLSON: Objection to the form. 10:23:33

16 THE WITNESS: Yeah, can you -- can you
17 unpack that.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. Do you think it's important that survey
20 results are not an artifact of an artificial 10:23:42
21 environment?

22 MS. OLSON: Same objection.

23 THE WITNESS: So, let's unpack that, too.

24 Surveys have different purposes. And
25 sometimes a survey to be -- to produce useful 10:23:58

1 results needs to be as realistic as possible.

2 Other times, a survey to -- to -- to
3 produce useful results needs to be abstracted from
4 reality and not be as realistic as possible.

5 So the -- the exact design of the survey 10:24:20
6 depends on the goals of the survey. For example, if
7 I want to make sure, as I did in my studies, that
8 people -- to see what people understand when they
9 read something, I need to make sure they can read
10 that something and that they do read it, subject to 10:24:35
11 the same garbage in/garbage out critique that I
12 described in the past.

13 If I want to make sure that I assess
14 people's perceptions about a -- an under- -- and
15 expectations about a particular stimuli, then I want 10:24:51
16 to make sure that they see that stimuli. And if I
17 want to try to forecast behavior in the real world,
18 then I want to try to make sure that the situation
19 is -- which is never going to be identical unless
20 you do a field experiment, is as close to the 10:25:10
21 situation people find themselves as I can.

22 MS. OLSON: And it's been a -- over an
23 hour. Do you mind if we take a quick break? I
24 think the court reporter would appreciate that as
25 well. 10:25:24

1 MR. REBLITZ-RICHARDSON: Sure.

2 MS. OLSON: Thank you.

3 THE VIDEOGRAPHER: Going off the record.

4 The time is 10:25 a.m.

5 (Short recess taken.) 10:25:36

6 THE VIDEOGRAPHER: Back on the record.

7 The time is 10:36 a.m.

8 BY MR. REBLITZ-RICHARDSON:

9 Q. Professor Amir, before the break, I had
10 asked you whether you think it's important to make 10:36:44
11 sure that survey results are not an artifact of the
12 artificial environment but actually occur in real
13 life.

14 Do you recall that?

15 A. Yes. 10:36:54

16 Q. And do you understand what that means, "an
17 artifact of the artificial environment"?

18 A. Of course.

19 Q. Okay. And so real life, that's how a user
20 would actually experience it; correct? 10:37:07

21 A. Yeah. That's, you know, up to some
22 philosophical debate, but yes. For the sake of
23 this, yes.

24 Q. And do you believe that a survey should be
25 similar to the actual consumer experience? 10:37:22

1 MS. OLSON: Objection. Asked and
2 answered.

3 THE WITNESS: Yes. Sorry, Aly.

4 I responded to this with, actually, a more
5 detailed answer than the question warranted for 10:37:29
6 because the question is incorrect. The question
7 assumes that there is only one goal for surveys, and
8 that's entirely incorrect.

9 And what I've stated was that for some
10 goals of the surveys, you really want high realism, 10:37:42
11 and for other goals of the sur- -- of a -- of
12 surveys, you do not. It really depends on your
13 goal. And I detailed in my previous response even
14 more.

15 BY MR. REBLITZ-RICHARDSON: 10:37:57

16 Q. And with respect to the surveys you
17 conducted in this case, were you seeking what you
18 referred to as "high realism"?

19 A. So -- and that's -- was part of my
20 response to the -- you know, previously, previous to 10:38:11
21 the break.

22 When I want to see, for example, in my
23 second survey, how people understand a certain text,
24 I want to make sure that they are exposed to that
25 text and even appointed [verbatim] to a particular 10:38:24

1 point of interest in the text. And so, otherwise, I
2 might get garbage in/garbage out. If I ask people
3 how you understand it, they actually didn't read it.
4 Their response would be, at the best, irrelevant.

5 In my first study, I wanted to see how 10:38:44
6 people -- what their perceptions and expectations
7 are based on exposure to the splash screen and, when
8 relevant, a -- potentially, a Learn More screen.

9 And so, I tested it in a -- in a situation
10 in which makes sure that people can attend to the 10:39:03
11 stimuli they're supposed to respond to.

12 In my third study, it's a different design
13 because the goal is different. That's likelihood of
14 use. And in my third study, therefore, I did not
15 make sure people saw the Learn More screen if they 10:39:21
16 didn't click it themselves.

17 So each study has its own goals. Each
18 goal of the study warrants a specific design that's
19 best suited to -- to address the question at hand.

20 Q. And so, your goal with the second survey 10:39:31
21 would -- was to understand how people understood
22 certain texts; correct?

23 A. Yes.

24 Q. And your goal with the first survey was to
25 assess people's understandings based on their 10:39:43

1 exposure to certain stimuli; correct?

2 A. Well, their perceptions and expectations.

3 You could call them understandings, but that's

4 specifically how I called them.

5 Q. And in connection with your first survey, 10:39:56

6 were you seeking to design it in a way that was

7 similar to how the actual -- to the actual consumer

8 experience with private browsing?

9 MS. OLSON: Objection to the form.

10 THE WITNESS: If -- if I had done so, I 10:40:12

11 wouldn't have forced people to spend 30 seconds on

12 the screen. No. I wanted to see what people, when

13 they do attend to the stimuli, what their

14 expectations, perceptions are.

15 And that is because my assumption was that 10:40:28

16 people that don't care enough to attend, they don't

17 care. The world has people that don't care. And I

18 didn't want to have results that were not

19 conservative where you can say, Well, you didn't

20 find people thinking this and that because people 10:40:45

21 just don't care, and they didn't spend time reading

22 this.

23 So my design was especially made to

24 conditioning people caring enough to read this, what

25 do they expect happens. 10:41:00

1 BY MR. REBLITZ-RICHARDSON:

2 Q. So you wanted to make sure that the
3 respondents actually read the materials; correct?

4 A. We're exposed to the materials. I can't
5 force people to read. But we're exposed to the 10:41:08
6 material for a sufficient amount of time and
7 quantity that allows them to actually attend to the
8 stimuli.

9 Q. In real life, are consumers forced to
10 review the materials used in your surveys for a 10:41:23
11 minimum amount of time?

12 A. Of course not.

13 Q. In real life, are consumers forced to
14 review all the materials used in your surveys?

15 A. Well, in real life, when consumers or 10:41:32
16 users open an incognito or private browsing mode,
17 they are, by definition, exposed to the splash
18 screen. So that's why in my third study, that was
19 aimed at -- at looking at intentions of use, I only
20 expose them to the splash screen. 10:41:52

21 Q. Okay. Other than the splash screen, in
22 real life, are consumers forced to review all the
23 materials used in your surveys?

24 A. Of course not.

25 Q. Why -- 10:42:03

1 A. Because that was the point; right? If
2 people don't care enough to read this, then they, by
3 definition, don't care.

4 Q. With all three surveys, did you require 10:42:17
5 the respondents to review the stimuli for fixed
6 periods of time?

7 A. I believe that I required them to review
8 the splash -- to look at a splash screen for 30
9 seconds.

10 Q. And why did you do that? 10:42:31

11 A. Because I wanted to make sure they see the
12 splash screen. The third study tested a particular
13 question about the language on the splash screen.
14 If you're not going to even have a chance to attend
15 to the language, then the study is not testing what 10:42:45
16 it was designed to do. Therefore, I did that.

17 Q. How did you decide how much time to give
18 people with each stimuli?

19 A. So based on my experience with previous --
20 with many, many previous studies, 30 seconds seems 10:42:57
21 enough to attend to the splash screen and at a
22 minimum, look at what's at the learn more page if
23 you didn't actually click on it. If you clicked on
24 it, you had as much time as you wanted to read
25 what's there. 10:43:14

1 Q. And so, when you say "click on it," you're
2 talking about using a hyperlink; right?

3 A. Yeah, sorry. The -- the splash screen in
4 Incognito in Firefox had a learn more or -- or
5 something like that, hyperlink that opens a page 10:43:29
6 that details to a greater extent what was described
7 on the splash screen.

8 Q. And so, in your first two studies, you
9 included act- -- those active hyperlinks; right?

10 A. I included the active hyperlinks in all 10:43:46
11 studies, all three studies.

12 Q. Did you record how often those respondents
13 used those active hyperlinks?

14 A. I did.

15 Q. And did you produce those results? 10:43:56

16 A. I don't think they're in my report. But
17 let me just -- I think it's relevant to a point you
18 made earlier about the sensitivity analysis. All of
19 the sensitivity analysis I conducted and -- and the
20 answer to this question that you just asked can be 10:44:09
21 easily deduct -- deduced or -- or observed from the
22 data that I did provide.

23 I provided all the data, not just the
24 completes, all the data that I had in my survey.
25 And -- and from that production, you can answer all 10:44:24

1 of these questions yourself. But I -- I -- I
2 actually looked, and I happen to remember on average
3 how many people clicked on the learn more page in
4 the different studies.

5 Q. I -- I understand that you produced the 10:44:37
6 data. But you didn't produce any of the sensitivity
7 analysis that you've -- you've referred to in your
8 testimony today; right?

9 A. Well, I didn't produce some of the
10 sensitivity analysis. I didn't produce those that 10:44:50
11 we discussed. But I produced the data, and you can
12 run the sensitivity analysis easily from the data I
13 produced. Just like you can tell that on average
14 about two and a half percent of the people click
15 learn more page because you have the data. 10:45:07

16 Q. What is the two and a half percent?

17 A. As I said, on average across three
18 studies, slightly less than two and a half percent
19 of the people click on the learn more page.

20 Q. Let's go to paragraph 3 of your report, 10:45:24
21 Amir Exhibit 1. If you could just --

22 A. Hold on. Paragraph 3?

23 Q. Yeah.

24 A. What page?

25 Q. Page 1. 10:45:38

1 A. Just one second. Page 1, 3, yes, opinion

2 2.

3 Q. Could you please read aloud the first
4 sentence there.

5 A. Yes, and I'll do it slowly for the 10:45:53
6 reporter.

7 "I designed and conducted my Consumer
8 Perceptions and Expectations Study to assess whether
9 and to what extent users expect different types of
10 entities to receive or to not receive data (such as 10:46:07
11 IP addresses, URLs of the site users visit, and
12 cookies) when they visit websites while in private
13 browsing mode." [As read].

14 Q. And thank you.

15 Why did you ask about different types of 10:46:26
16 entities? Do you see the reference to different
17 types of entities?

18 A. Yes.

19 Q. Why did you ask about different types of
20 entities? 10:46:41

21 A. Well, I believe that the Complaint talks
22 about a lot of types of entities that might get the
23 data. And not -- not being able to ask about all of
24 them in a -- in a reasonable survey that users can
25 respond to, and not wanting to taint results with 10:47:00

1 specific brand names where people might have
2 preexisting attitudes that might taint the results,
3 positive or negative, I opted for a general
4 description of -- which, you know, amounted to
5 different types of entities.

10:47:18

6 And in the survey, it's not different
7 types of entities. If you want to go down to the
8 survey, you can see how exactly I describe them. I
9 believe I have three types. But let me just go to
10 the study questions.

10:47:33

11 Q. And if you can just identify for the
12 record what you're looking at.

13 A. Yeah, yeah, let me just -- sorry,
14 scrolling is not very fast for me on the system.

15 So hold on. 10:47:46

16 Q. If you don't mind, maybe we can look at
17 G-1. I think that's your first study in terms of
18 what was actually shown.

19 A. G-1, let me go there. I was in the
20 F appendix.

10:48:09

21 Q. Or F, whatever is useful for you to --

22 A. Yeah, that's okay. Let me -- let me go to
23 G-1.

24 Okay. So I believe the first question is
25 G.1-16.

10:48:27

1 Q. Okay.

2 A. It says, "While in Incognito mode, do the
3 companies that own the websites you visit during the
4 session receive or not receive the data from your
5 Incognito session?"

10:48:41

6 And then it says, "(such as IP addresses,
7 URLs of the site you visit, and cookies)." [As
8 read].

9 The next question says, this is G.1-17,
10 "While in Incognito mode, does your internet service provider receive or not receive data from your
11 Incognito session (such as IP addresses, URLs of the
12 sites visit, and cookies.)" [As read]

14 And the third type of entity I tested is
15 in G.1-18, "While in Incognito mode, do companies that provide analytics and advertising services to
16 the websites you visited during this session" --
17 "the session" -- sorry -- "receive or not receive
18 the data of your Incognito session (such as IP
19 addresses, URLs of the sites you visit, and
20 cookies.)" [As read].

10:49:27

22 So those are the three types of entities
23 that my survey tested.

24 Q. All right. Thank you. That's helpful.

25 So focusing on the first one you tested,

10:49:37

1 G.1-16, that's the companies that own the websites
2 you visit; right?

3 A. Yes.

4 Q. And that's clear right there on the
5 Incognito screen -- screen where it says websites 10:49:48
6 you visit; right, that's at G.1-13?

7 A. Maybe --

8 MS. OLSON: Objection to the form.

9 THE WITNESS: Yeah, maybe. That's an
10 empirical question; right? If it's clear or not 10:49:58
11 clear and what -- what do users -- that's exactly
12 what the study is trying to assess; right?

13 BY MR. REBLITZ-RICHARDSON:

14 Q. If you go to G.1-13, do you see where it
15 says "websites you visit"? 10:50:08

16 A. G.1-13, "websites you visit." You just
17 assume that websites you visit and companies that
18 own the websites you visit are the same thing. I'm
19 not -- I'm not assuming anything.

20 Q. Okay. But is -- is that question, G.1-16, 10:50:20
21 linked to that first bullet, websites you visit?

22 MS. OLSON: Objection to the form.

23 THE WITNESS: Clearly companies that own
24 the websites you visit is related to the websites
25 you visit. 10:50:34

1 BY MR. REBLITZ-RICHARDSON:

2 Q. Okay. And then G.1-17, "your internet
3 service provider," do you see that's the third
4 bullet here; right? Your internet service provider
5 on G.1-17?

10:50:48

6 A. Yeah, clearly.

7 Q. Okay. Why didn't you ask about your
8 employer or school?

9 A. Because I felt that that could be
10 biassing.

10:50:58

11 Q. Okay. But then you went ahead and asked
12 about something that's not on the Incognito screen,
13 which is companies that provide analytics and
14 advertising services.

15 Do you see that in G.1-18?

10:51:12

16 MS. OLSON: Objection to the preamble of
17 the question.

18 THE WITNESS: Yes, I think -- I think that
19 you're assuming that I constructed the study purely
20 based on the Incognito splash screen, and I did not.

10:51:25

21 BY MR. REBLITZ-RICHARDSON:

22 Q. Is there anything on the Incognito screen
23 that references companies that provide analytics and
24 advertising services?

25 MS. OLSON: Objection to the form.

10:51:38

1 THE WITNESS: Not that I can tell.

2 BY MR. REBLITZ-RICHARDSON:

3 Q. And why did you ask about analytics and
4 advertising services? Why not ask about Google?

5 A. That's a good question.

10:51:52

6 As I said before, I asked about this
7 general class of companies because this general
8 class of companies was mentioned in the Complaint.
9 And as I said, including any specific brand names
10 such as Google, Amazon, Facebook, Adobe, would have 10:52:10
11 the possibility to bias the -- the response to this
12 question because of prior familiarity or preexisting
13 attitudes, positive or negative, to those companies.
14 And I wanted to avoid such noise sources to the
15 data. 10:52:31

16 Q. What about an Incognito user who might be
17 under the impression that some third-party analytics
18 company would collect their Incognito browsing
19 session information, but that Google would not, how
20 are they supposed to answer this question? 10:52:50

21 MS. OLSON: Objection. Incomplete
22 hypothetical.

23 THE WITNESS: Yeah, I'm not -- not exactly
24 sure what -- what you're referring to. When -- when
25 you say -- when you give a general term, "companies" 10:52:59

1 that provide analytics," the responder is free to
2 understand this as -- as they want. And if they --
3 respondents is [verbatim] thinking about Google,
4 they might answer about Google. If they're thinking
5 about Amazon, they might be thinking about Amazon. 10:53:15

6 BY MR. REBLITZ-RICHARDSON:

7 Q. Did you ask the respondents whether --

8 (Interruption in audio/video.)

9 THE COURT REPORTER: Excuse me, one
10 second. Sir, there was an interruption in audio. 10:53:27
11 If you'd please start over.

12 BY MR. REBLITZ-RICHARDSON:

13 Q. Did you ask any of the respondents whether
14 they were thinking about Google when they answered
15 the question on G.1-18 regarding companies that 10:53:33
16 provide analytics and advertising services?

17 A. In survey -- in my first survey, as you
18 refer to it, I don't ask them any specific questions
19 beyond this general understanding. My second
20 question -- my second survey was specifically about 10:53:52
21 Google.

22 Q. Did -- in your first survey, did you test
23 whether the respondents understood that Google is a
24 company that provides analytics or advertising
25 services? 10:54:06

1 A. Again, you're -- you're assuming too much
2 from -- of what this -- what this -- what the study
3 was supposed to do. The study was supposed to test
4 for users' perceptions of this general category.
5 They can -- they can -- they can think of whoever 10:54:21
6 they can think of.

7 Q. And it was not designed to test anything
8 about Google; right?

9 MS. OLSON: Objection to the form.

10 THE WITNESS: Actually wrong. It was 10:54:31
11 designed to test whatever people thought about when
12 they thought about these kind of companies. So
13 Google is probably included. But this study wasn't
14 meant to separate Google out from the rest of such
15 companies when responding to this question. I 10:54:49
16 designed my second survey to test specifically
17 understandings about Google.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. Professor Amir, you've conducted studies
20 before; right? 10:55:00

21 A. Yes.

22 Q. And here you are saying what people
23 probably understood but without testing it. Why is
24 that?

25 A. Because for this -- for the purposes -- 10:55:06

1 again, I think that it goes back to what the goal of
2 a study is, which I think arguably, based on
3 Mr. Keegan's rebuttal report, he did not quite
4 understand this point so I'll -- I'll try to clear
5 it up.

10:55:23

6 Every study has its own goal and purpose.
7 This study's goal was to look at users' perceptions
8 and expectations of different entities, which we
9 just mentioned, three different classes of entities,
10 whether they receive or not receive information from 10:55:43
11 this private browsing session on three different
12 browsers, on Chrome, on Safari, and on Firefox.
13 That was the goal of this study.

14 And therefore, asking -- you know, asking
15 further questions about other goals are going to get 10:56:06
16 you the same answer. This wasn't the goal of this
17 study.

18 Q. Okay. G-14. Do you see the Google Chrome
19 help page -- web page there?

20 A. Sorry, where? 10:56:21

21 Q. G.1-14?

22 A. G.1-14, going there. Yes.

23 Q. Is it possible that the respondent in your
24 survey would have already reviewed this, and here
25 been presented with it for a second time? 10:56:33

1 A. Do you mean that they have seen it in
2 their private life before?

3 Q. Sorry. That's a good clarification.

4 In the -- in the survey, could they have
5 already seen it by clicking on the hyperlink? 10:56:47

6 A. No.

7 Q. There are no occasions when a respondent
8 in your survey would have seen this screen twice?

9 A. No. If they click the hyperlink, they
10 was -- they were not shown this screen. 10:57:02

11 Q. Okay.

12 A. They --

13 Q. Go ahead, sorry.

14 A. Sorry, they would not be shown this screen
15 in additional time. 10:57:12

16 Q. Okay.

17 A. They would be directed to the screen, and
18 if -- if they did it before the 30 seconds ended,
19 there was the -- you know, the minimum timer
20 still -- still held. 10:57:22

21 Q. How did that work? So if -- if I'm not
22 yet to my 30 seconds and I click "learn more," does
23 it not pop up until the 30 seconds has passed?

24 A. Well, in this study, it -- it waits until
25 30 seconds, and then it pops up. 10:57:33

1 Q. Okay.

2 A. In the third study, it's -- it's not.

3 Q. But you wouldn't see this twice?

4 A. You would not see this twice.

5 Q. Okay. Would an Incognito user necessarily 10:57:40
6 see this Google Chrome help page?

7 A. I think we discussed this before. An
8 Incognito user who clicked on the learn more page
9 would -- would see this. An Incognito user who did
10 not click would not see this page. 10:57:56

11 Q. Okay. And hyperlinks on this page were
12 disabled; right?

13 A. That's right. There is a limit to how
14 much information people could see in this particular
15 survey. 10:58:08

16 Q. So why did you disable those hyperlinks?

17 A. Because, you know, you need to design a
18 study that people can answer and respond to. And if
19 you send them down the rabbit hole with hyperlinks,
20 it's almost a certain way to lose this respondent. 10:58:23

21 Q. If you go to G.1-18, do you see where you
22 said "You can click the thumbnails to see the
23 enlarged versions of these images"? [As read].

24 A. Yes.

25 Q. And why did you allow people to view 10:58:37

1 enlarged versions of these images --

2 A. Yeah --

3 Q. -- while answering this question?

4 A. Sorry.

5 We are going back to the goal of this 10:58:46

6 study. The goal of the study is not to create a
7 memory test, where you read something -- I don't
8 remember if you remember this from school -- you
9 read something and then you were tested on what was

10 written there. 10:58:54

11 The goal of this study was to see what you
12 expect and -- and perceive to happen given that you
13 actually read the splash screen or was exposed to
14 the splash screen and -- and the learn more page in
15 the conditions where a learn more page existed, 10:59:14
16 which I think excludes Safari.

17 And so, if responders get to this point,
18 and they realize, oh, I don't remember, or I haven't
19 looked, they have the option to look at it again.
20 Because what I'm trying to assess here is what would 10:59:28
21 be their expectations given the actual stimuli, not
22 what they might remember from the past.

23 Q. Did you produce data regarding the number
24 of people who enlarged versions of these images?

25 A. I'm not sure I have the data for those -- 10:59:46

1 for that information.

2 Q. Okay. Let's talk about your second
3 survey, the interpretation study.

4 A. Okay.

5 Q. How did you select the documents used in 10:59:57
6 your interpretation study?

7 A. Yeah, so I started out by looking at the
8 Complaint. And I think the Complaint implicates --
9 let me just -- sorry, let me -- let me go to that.
10 I'll tell you which -- which page I'm on. One 11:00:17
11 second.

12 So there were four conditions in this
13 study. The splash screen only is obvious; right?
14 That's in the learn more page --

15 Q. Where is that? 11:00:47

16 A. -- that's at the heart of the claim. I
17 believe that the splash screen with policies, the
18 Google policies that are mentioned there, are
19 actually mentioned in the Complaint. But then I
20 wanted to test whether it might be some -- the 11:00:58
21 understanding might be specific to these documents
22 or whether it's -- it's a more -- it's a more
23 general phenomena.

24 And so, I looked at various potential
25 Google documents, and I believe that I asked counsel 11:01:14

1 what other documents might inform users of
2 relevant -- what might be relevant to Incognito.
3 And I chose this of the list of many possible
4 documents, again, because it's not feasible to test
5 all possible documents. And I felt this is a 11:01:35
6 representative sample of relevant documents.

7 Q. Can you identify for me the documents that
8 you considered but decided to not include in your
9 survey 2?

10 A. Not on the top of my head [verbatim], no. 11:01:50

11 Q. With respect to the documents you did
12 include in survey 2, did you carefully review them?

13 A. At one point, yes.

14 Q. Based on your careful review of those
15 documents, do you know what private browsing 11:02:04
16 information Google collects?

17 MS. OLSON: Objection to the form.

18 THE WITNESS: As -- as I said, this is --
19 this is a memory test, and I read them quite a while
20 ago. So I don't remember what every document said. 11:02:17

21 BY MR. REBLITZ-RICHARDSON:

22 Q. Well, based on your careful review of
23 those documents, sitting here today, can you
24 describe for me how Google collects private browsing
25 information? 11:02:29

1 A. Are you asking me to --

2 MS. OLSON: I instruct --

3 THE WITNESS: Sorry.

4 MS. OLSEN: Go ahead. You were -- I think
5 you were going to say what I was going to say. 11:02:33

6 THE WITNESS: Are you asking me to go now
7 and review those documents carefully and then
8 answer? Because I can do that because they're --
9 they're included in my report in the appendix.

10 BY MR. REBLITZ-RICHARDSON:

11:02:48

11 Q. I suspect that's going to take an enormous
12 amount of time. And so, I would ask that you not do
13 that. But without refreshing your recollection,
14 based on your prior careful review of those
15 documents, do you have any understanding as to what 11:03:02
16 private browsing information Google collects?

17 MS. OLSON: Objection. Asked and
18 answered.

19 THE WITNESS: Yeah, as I said before, from
20 my -- from my private use of Incognito mode, what 11:03:08
21 I -- what I think I know is that information from
22 the session is not saved on my local machine. And
23 that's my primary reason for using Incognito mode.
24 And, you know, from reviewing the policies, some of
25 my usage is observable to anybody I -- I use the -- 11:03:32

1 so I use the browser with.

2 So as I said before, if I go to Amazon and
3 I buy something, Amazon knows that someone bought
4 something. If I log into my Amazon account, Amazon
5 definitely knows it's me even though I'm in 11:03:56
6 Incognito mode.

7 BY MR. REBLITZ-RICHARDSON:

8 Q. Was your second study limited to people
9 with a Google account?

10 MS. OLSON: Objection. Asked and 11:04:03
11 answered.

12 THE WITNESS: Yeah, I think I answered
13 that. The answer is no.

14 BY MR. REBLITZ-RICHARDSON:

15 Q. Was your second study specifically about 11:04:08
16 visits to non-Google websites?

17 A. I'm not sure I understand the question. I
18 think, you know, let's go to the second study and
19 clarify what -- what it does, if -- if you want.

20 Q. Well, if you need to do that, but my 11:04:25
21 question is pretty simple. You understand that
22 Google has certain websites like google.com; right?

23 A. Yes.

24 Q. And do you understand that this lawsuit is
25 about people visiting non-Google websites? 11:04:41

1 A. I understand that this lawsuit is about --
2 yes.

3 Q. Right. And you understand that this
4 lawsuit is about Google collecting data when people
5 visit non-Google websites in a non-private browsing 11:04:51
6 mode; right?

7 MS. OLSON: Objection to the form.

8 THE WITNESS: Yeah, I understand it's --
9 it's at least some of the -- of where the Complaint
10 lies. 11:05:01

11 BY MR. REBLITZ-RICHARDSON:

12 Q. Okay. And did your second study, in any
13 way ask or focus on -- focus on the issue of someone
14 visiting a non-Google website, as opposed to a
15 Google website? 11:05:11

16 A. So my second study does not limit
17 non-Google websites, but let's go -- I think it's
18 important to go and see what the questions were. So
19 I'm in F.2-17.

20 Q. Okay. Thanks for the page number. 11:05:25

21 Okay. Go ahead.

22 A. So question Q10 says, "Based on the
23 screens that you reviewed," which we described
24 before what they were, "please select one of the
25 following regarding URLs of the sites you visit" -- 11:05:41

1 Q. Mm-hmm.

2 A. -- "during an Incognito mode internet
3 browsing session (e.g., watching a video or shopping
4 for a product.)"

5 And then the scale goes from "Google does 11:05:54
6 not receive this information" to "Google probably
7 does not" to "It is uncertain whether Google
8 receives this" to "Google probably receives this" to
9 Google does receive this." [As read].

10 So to the extent that responders use any 11:06:11
11 websites, especially with the example of watching a
12 video or shopping for a product, that's what
13 responders are going to be thinking about. So it's
14 not limited to non-Google websites, but it's
15 probably for the most part is related to every 11:06:24
16 websites [verbatim] they visit.

17 Q. Right. But it's possible when someone's
18 thinking about this question 10, that they're
19 thinking when you write "sites you visit," about a
20 website like google.com; fair? 11:06:39

21 A. Not quite. Because I say watching a
22 video, you can't watch a video on google.com and
23 shopping for a product -- and you can shop for a
24 product on google.com.

25 Q. Can you watch a video on YouTube? 11:06:53

1 A. You certainly can.

2 Q. Can you shop on google.com?

3 A. You can't shop on google.com. It'll take
4 you to somewhere to shop for. Google.com is --
5 is -- is the simplest page, which is just a search 11:07:08
6 bar -- a search bar.

7 Q. Are you familiar with something called
8 Google shopping?

9 A. Yeah, and that's -- and that's after you
10 have search results you can -- you can shop through 11:07:14
11 there. But -- but, for example, if you think about
12 shopping -- when I think about shopping, I think
13 about Amazon. I do most of my shopping on Amazon.
14 And if you look at market shares of people -- where
15 people shop, google.com is not the first one. 11:07:30

16 Also, if you look at data that I actually
17 cite referenced in the case from -- from Google
18 about the kinds of things people use Incognito mode
19 for, the top three are -- are probably not done on
20 Google websites. 11:07:47

21 Q. So, Professor --

22 A. So -- yeah. Sorry. So it's -- so it's --
23 it's extremely likely the majority of responders
24 here, based on -- on all the preexisting data and
25 facts, are not thinking about google.com. 11:08:03

1 Q. Did you test that?

2 A. I did not.

3 Q. Did you have any questions to assess that?

4 A. As I said, I -- I had these questions that
5 look at -- the first question looks at general sites 11:08:12
6 you visit. The second one has exactly the same
7 prompt. And the third one has exactly the same
8 prompt.

9 Q. Right.

10 You ask about sites you visit without 11:08:25
11 limiting it to non-Google websites; correct?

12 A. Of course.

13 Q. And then you have this parenthetical about
14 watching a video or shopping for a product; right?

15 A. As an example, yes. 11:08:38

16 Q. And you didn't include that in the first
17 survey; right?

18 A. It wasn't relevant for the sur- -- for the
19 first survey.

20 Q. Were you the one that came up with these 11:08:46
21 two examples, watching a video or shopping for a
22 product?

23 A. Yes. I said I wrote the questions.

24 Q. Would you agree that there's at least a
25 risk that the reference to watching a video would 11:08:57

1 prime people to they're visiting Google-owned
2 youtube.com?

3 A. I think there's some risk that that's --
4 that some of the sample might have thought about
5 that. But it's certainly not -- it's -- given these 11:09:11
6 two examples, it's certainly not going to be the
7 majority.

8 Q. Let's go back to -- I was going to say --
9 let's go to G.2 of 11, which is one of the --

10 THE COURT REPORTER: Could you please 11:09:32
11 repeat.

12 BY MR. REBLITZ-RICHARDSON:

13 Q. G.2-11.

14 A. I'm in -- sorry, G.2-11?

15 Q. G.2-11. 11:09:41

16 A. Sorry. I went to F. One second.

17 G.2-11, I'm there.

18 Q. Does G.2-11 include an instruction that
19 you provided to every respondent included in your
20 Survey 2? 11:10:10

21 A. Of course.

22 Q. Would you please read aloud the first two
23 sentences.

24 A. Yes.

25 "This survey is about private browsing 11:10:16

1 mode," full stop. You have been selected to answer
2 questions about Chrome, which is a browser from a
3 company named Google."

4 Q. And why did you instruct your respondents
5 that Chrome is a browser from a company named 11:10:33
6 Google?

7 A. I wanted to set up the situation so that
8 responders understand where -- what context they
9 need to imagine. I'm later going to show them the
10 Chrome incognito mode and other potential documents. 11:10:52

11 And so it's important to set up the
12 setting so that responders know exactly what we're
13 referring to.

14 Q. Would you agree with me that telling your
15 respondents that Chrome is a browser from Google 11:11:07
16 will influence their answers?

17 A. No, because -- not in this survey, because
18 I do this, and then I say -- if you want to read the
19 next, I say, "Next, you will see images of a screen
20 that appears when you enable Chrome's Incognito mode 11:11:24
21 and a page that includes additional information for
22 private browsing, as well as Google's Privacy Policy
23 and Chrome's Privacy Notice." [As read].

24 Now, if I hadn't said that Chrome is from
25 Google, it might have been strange. If you're a 11:11:38

1 person that doesn't realize this or doesn't know,
2 why am I showing you Google's private policy. And
3 so it's important to set up the setting correctly.

4 In pages afterwards I show them documents
5 from Google with the brand name Google, and -- and 11:11:52
6 every one of them has mention of -- of -- or almost
7 every one of them, has mention of Google.

8 So telling them up front that Chrome is a
9 browser named Google, preceding the second
10 sentence -- the second paragraph which I read the 11:12:12
11 first sentence from, makes no difference for their
12 responses, absolutely no difference.

13 Q. Did you test whether the respondents in
14 your Survey 2 understood there is a difference in
15 terms of how Chrome stores information and how 11:12:25
16 Google stores information on its remote servers?

17 A. Again, I'll go back to the question -- the
18 three questions, and I -- I read them, but I just
19 basically ask, "Based on the screens that you
20 reviewed, please select one of the following 11:12:46
21 regarding," and then there's three types of -- or
22 classes of data.

23 The -- the question in G.2-24 says, "Based
24 on the screens you reviewed, please select one of
25 the following regarding URLs of the sites you visit 11:13:00

1 during an Incognito mode internet browsing session"
2 [as read], with the e.g. in parentheticals.

3 And then the options are "Google does not
4 receive this information" to "Google does not" [as
5 read] -- sorry, "Google does receive this 11:13:14
6 information" in this example to "Google does not
7 receive this information," right, on a scale. So
8 what I test is whether they think Google receives
9 this information.

10 Q. And after telling your respondents that 11:13:26
11 Chrome is a browser offered by Google, do you think
12 it's possible that your respondents answered your
13 questions focused on what Chrome, the browser,
14 receives?

15 A. No. 11:13:42
16 MS. OLSON: Objection. Incomplete
17 hypothetical.

18 THE WITNESS: Sorry.

19 No, I -- I -- no, there's no reason to
20 think that would be the case. 11:13:46

21 BY MR. REBLITZ-RICHARDSON:

22 Q. Did you test that?

23 A. There's no reason to test that.

24 Q. But you didn't test it?

25 A. You -- you could go to every survey 11:13:52

1 question and ask, Is there a reason to believe
2 that -- that respondents are answering a different
3 question? This is what you're asking me.

4 There's no reason to believe here --
5 and -- and I pretested this. Remember, we talked 11:14:03
6 about the pretest. There's no reason here to
7 believe that respondents are answering not the
8 questions I asked them.

9 Q. Well, did you clarify for your respondents
10 that you were asking about what Google receives on 11:14:15
11 its remote servers?

12 A. I don't know what remote servers are. It
13 doesn't matter. I asked them whether they think
14 Google received -- this is a far more conservative
15 question. 11:14:28

16 Because if they thought Google received it
17 in any way, they would say that Google received this
18 information. If they thought Google did not receive
19 this in any way, they would say it does not.

20 Q. Right. 11:14:38

21 A. Trying to unpack this would be less
22 conservative.

23 Q. And -- and they would say Google probably
24 receives this information if they thought, Oh, this
25 is about visiting google.com logged in to my Google 11:14:46

1 account; fair?

2 A. No.

3 MS. OLSON: Objection to the form.

4 BY MR. REBLITZ-RICHARDSON:

5 Q. That's not fair?

11:14:54

6 A. Not fair at all. And I -- and I'll --

7 I'll tell you something about the logging in to my
8 Google account.

9 Every incognito screen I've shown in my
10 studies shows you logged out, which is the
11 default -- when you open incognito mode, you're
12 always logged out. And that's important because I
13 did not show people them logged in to a Google
14 account. All of my stimuli are logged out.

15 There's no reason for the user to think
16 we're talking about a case they logged in, which I
17 don't know how -- you know, how often it happens. I
18 never log in on incognito mode because that kind of
19 would, you know, defy the whole point.

20 And so I asked them a question, and
21 there's no reason to think they're answering a
22 different question.

23 The question you're suggesting is less
24 conservative. If Google, in any way, does not
25 receive this data or receives this data, that
11:15:28
11:15:42

1 subsumes sub- -- sub-questions of how different
2 aspects, at Google, received this data.

3 Do you agree?

4 Q. I don't agree, but I'm not under the --
5 I'm not answering questions today. 11:15:56

6 A. But --

7 Q. When I see sites -- sites you visit, I
8 think that includes google.com, and I think that
9 includes the possibility of logged in browsing. But
10 you're the one who constructed the survey. I'm 11:16:09
11 trying to understand what you did to test whether or
12 not any respondents had that understanding.

13 And my ans- -- my understanding is you
14 didn't test that; is that correct?

15 A. I did not test -- 11:16:24

16 MS. OLSON: Objection to the form and the
17 preamble.

18 THE WITNESS: Yeah. I -- I -- so I -- I
19 told you exactly what I -- what I do test. And
20 we've talked about what's the likelihood that 11:16:32
21 somebody imagined google.com with this question.
22 And based on my expertise, it's quite low. But I
23 also said that to have a conservative question, I
24 did not include specifics such that you mentioned.

25 BY MR. REBLITZ-RICHARDSON: 11:16:47

1 Q. Right.

2 G.2-16. Why did you instruct your
3 respondents to carefully read the Google privacy
4 policy?

5 A. I think we have discussed this before. 11:16:57
6 I'll -- I'll -- I'll repeat my answer.

7 This study is designed -- the goal of the
8 study is to assess the understanding that users
9 might have when they read the privacy policy.

10 So before I ask them question that assess 11:17:16
11 the understanding, I want to make sure -- or I want
12 to try to make sure they read the privacy policy
13 because, otherwise, what am I asking about?

14 Q. And when you get to G.2-18 with the
15 highlighting, were you asking them to review the 11:17:32
16 Google pol- -- privacy policy again?

17 A. I think that these are different
18 conditions; right?

19 Q. You're the expert. I'm asking you.

20 Were you asking them to read the Google 11:17:55
21 policy -- Google privacy policy twice?

22 A. No, I did not. Every one of them saw this
23 just once. And you can see that G 20 also has the
24 same slide, because it had four conditions.

25 Q. Okay. So in your second study, no one saw 11:18:09

1 the Google privacy policy twice; is that correct?

2 A. Yeah, that was the design.

3 Q. Okay. So you only showed them the Google
4 privacy policy once, but you had a minimum
5 30 seconds of review; is that right? 11:18:24

6 A. I think it says 25 seconds of this
7 policy -- or -- yeah, 30 seconds, sorry. These are
8 screen captures, so they must ran [verbatim]. But
9 I'll -- I'll -- I'll correct your assumptions --

10 THE COURT REPORTER: So they must -- 11:18:41
11 excuse me. So they must what?

12 THE WITNESS: Can you read that sentence
13 to me? I'll complete it.

14 (Record read back by the reporter.)

15 THE WITNESS: Yeah, they must have 11:19:00
16 captured it after the timer started -- started
17 ticking. But I'll say that not every condition
18 watched the same policies. But no one in this
19 experiment saw any policy twice.

20 BY MR. REBLITZ-RICHARDSON: 11:19:17

21 Q. Okay.

22 A. The Google privacy policy was shown in --
23 for Group B only. What I think you're referring to
24 is the Learn More page that was shown to every
25 group. 11:19:30

1 Q. In your second study, was this stimuli
2 exposure reflective of the way that a typical
3 consumer engages with Chrome incognito?

4 MS. OLSON: Objection to the form.

5 THE WITNESS: And -- and I answered it 11:19:43
6 three times already. The goal of the study was not
7 to assess what a typical consumer does because a
8 typical consumer doesn't care.

9 The typical consumer doesn't even click
10 this as the click rate for the Learn More page hints 11:20:00
11 to us are very low. The typical consumer is not
12 what I'm testing. I'm testing consumers who
13 actually care about the privacy policy and have the
14 opportunity to attend and read it, how do they
15 understand what incognito mode -- what -- while in 11:20:18
16 incognito mode, what types of information does
17 Google receive or does not receive.

18 And, you know, I think -- I think --
19 again, I think that it -- it was obvious from
20 Keegan's rebuttals re- [verbatim] -- rebuttal report 11:20:37
21 that he did not understand the different goals of
22 the different studies because he keeps bringing up
23 this critique. This critique is nonsensical given
24 the goal of the study.

25 The goal of the study is to assess what 11:20:48

1 people understand when they do read these things.

2 BY MR. REBLITZ-RICHARDSON:

3 Q. And how did you decide what to highlight
4 in terms of your second study?

5 A. I tried to help responders by making sure 11:21:00
6 I highlight the -- the points that are relevant to
7 the incognito mode, questions that -- that are at
8 issue here.

9 Q. Did you select the text, or was that
10 someone else? 11:21:14

11 A. I selected the text. I had my Analysis
12 Group research assistants also take a look and see
13 whether I had missed anything of importance. And
14 that's how these things were highlighted.

15 Again, we provided the images. The study 11:21:28
16 itself was programmed by Dynata, by their
17 programers.

18 Q. Did you miss anything of importance with
19 your highlighting?

20 A. I hope not. 11:21:39

21 Q. Well, they checked; right?

22 A. Yeah. No, they didn't actually find
23 things that I missed.

24 Q. So they didn't make any changes to your
25 highlighting? You did that, and no one made any 11:21:47

1 changes?

2 A. Yes.

3 Q. Okay. And was that just you reviewing the
4 document and being like, This looks relevant, or did
5 you look at any of the case materials? 11:21:56

6 A. As I said, I did this after reviewing the
7 Complaint.

8 Q. Okay. Anything else other than reviewing
9 the Complaint?

10 A. You know, I must have seen some other 11:22:06
11 documents related. There is a judge decision, a
12 denial of something, which I cite in my --

13 Q. In the first report?

14 A. Yeah. I viewed those.

15 Q. Okay. Did you review those as part of 11:22:21
16 your decision on what to highlight?

17 A. I viewed those as -- as -- you know, as
18 part of my design process for the studies, not just
19 this decision.

20 Q. Okay. But did it influence what you 11:22:32
21 decided to highlight?

22 A. I'm sure it must have influenced in some
23 way.

24 Q. Would you agree that highlighting is
25 leading? 11:22:45

1 A. Highlighting is directing attention to.

2 Leading is a different term.

3 Q. Okay. Would you agree that highlighting
4 at least biases the responses?

5 A. No, I disagree.

11:22:53

6 Q. Okay.

7 A. Because I highlight, I say, "Look at
8 this," and I ask you, "What do you think is true?
9 Well, how you understand this?" There's no bias in
10 this process. It just increases the likelihood that 11:23:05
11 you've actually seen this.

12 So when I ask you about your
13 understanding, if for some reason you do not
14 misunderstand, it decreases the likelihood that you
15 did not -- did not understand because you didn't 11:23:21
16 read it or you didn't see it or you didn't attend to
17 it.

18 Q. With your third study, did you ask any
19 questions regarding those respondents' understanding
20 of any Google disclosures with respect to receiving 11:23:33
21 information?

22 A. You know, I -- with -- with the risk of
23 repeating myself, I think you're missing the goal of
24 the third study, or this question at least misses
25 the goal of the third study. 11:23:48

1 Q. Let me try again.

2 A. Okay.

3 Q. The goal of your third study was not to
4 assess anyone's understanding of Google receiving
5 information; is that fair? 11:23:57

6 A. Not directly, yes.

7 Q. It was to test these two different
8 versions of the incognito screen; right?

9 A. Yeah, the third study exposes respondents
10 between subjects, so it's an experimental study, to 11:24:12
11 two different versions of the incognito screen.

12 One version is the one I used in the rest
13 of the studies, and we've talked about where it came
14 from.

15 The other version is one with an amended 11:24:24
16 text.

17 And then the question I asked respondents
18 is what's the likelihood of use for this browser for
19 browsing the internet for sensitive material.

20 And I assessed the degree of willingness 11:24:40
21 to use this browser as a test of whether the change
22 in the language influences the likelihood of usage
23 for a browser in this setting.

24 Q. And who made the change to the language?

25 A. I did. 11:24:55

1 Q. Okay. And what changes did you make?

2 A. Let -- let's -- if -- if you allow me to
3 go to the study --

4 Q. Yep.

5 A. -- I'll go to G.3. But I'll -- I'll tell 11:25:11
6 you which -- which page in a second.

7 Q. Can I help you? And we go to Appendix H.2
8 and H.1. But maybe you have a different page in
9 mind.

10 A. Yeah, H.1 and H.2 will do the trick. 11:25:39

11 So I'm in H.1-1. H.1-1 is the incognito
12 splash screen that I've used in the other studies.
13 We've talked about where it comes from. I'll call
14 that the original language one.

15 And H.2-1 describes the incognito with 11:25:55
16 slightly changed language, which I changed based on
17 what the judge ruled in that decision might be
18 issues with the original incognito screen.

19 In particular, the judge said that the
20 first two sentences could either be understood as 11:26:26
21 separate or combined and that could lead to
22 different understandings.

23 And so I modified that to show that the
24 second one explains the first. So I said, "Now you
25 can browse privately, which means other people who 11:26:39

1 use this device," et cetera, et cetera.

2 And then the judge also ruled that the
3 splash screen did not actually state specific
4 companies, including Google, that might be private
5 to information, and so I added a bullet point that 11:26:58
6 says, "Companies that provide services to websites
7 you visit," in parentheses, "such as Google
8 Analytics, Adobe Analytics, Google Ad Manager, and
9 Facebook Ads" [as read], close parenthetic.

10 Q. Are you aware that Google, in 2021, 11:27:16
11 planned certain changes to the incognito screen?

12 A. I've read about it.

13 Q. Okay. And are you aware that in 2021
14 Google planned to remove the phrase "now you can
15 browse privately" from the incognito splash screen? 11:27:29

16 A. I'm actually not aware of the details.

17 Q. Okay. Did you do that with your study?
18 Did you remove the phrase "now you can browse
19 privately"?

20 A. I made the changes. I just described I 11:27:49
21 made two changes to the splash screen. And it was,
22 in particular, based on what the judge ruled or
23 concluded would be issues.

24 And I wanted to test whether those issues,
25 if amended, made a difference to the likelihood of 11:28:03

1 use of Chrome in incognito mode when browsing the
2 web for sensitive materials.

3 Q. But you kept the same incognito name;
4 right?

5 A. Well, the nature of an experiment is that 11:28:16
6 you only manipulate what you want to test and
7 nothing else. And that's what I did.

8 Q. And so the only thing you wanted to
9 chest -- test were the two changes you described;
10 right? 11:28:34

11 A. Yes.

12 Q. Okay.

13 MR. REBLITZ-RICHARDSON: Let's take a
14 break there.

15 THE WITNESS: Okay. How long? 11:28:38

16 MS. OLSON: Let's go off the record and we
17 can discuss.

18 THE VIDEOGRAPHER: Going off the record.

19 The time is 11:28 a.m.

20 (Lunch recess taken.) 12:15:54

21 THE VIDEOGRAPHER: Back on the record.

22 The time is 12:15 p.m.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. Professor Amir, I'd like to ask you some
25 questions regarding your rebuttal report, which has 12:16:13

1 been marked as Amir Exhibit 2.

2 Do you have that in front of you?

3 A. One second.

4 I do now.

5 Q. And you have 11 rebuttal opinions stated 12:16:24
6 in this -- this report; right?

7 A. I didn't count them. Maybe.

8 Q. Sorry. I was just referring to the
9 "EXECUTIVE SUMMARY" where you have Amir Rebuttal
10 Opinions 1 through 11. 12:16:40

11 Do you see --

12 A. Yeah.

13 Q. -- that?

14 A. I do see that.

15 Q. And 10 of those 11 rebuttal opinions are 12:16:46
16 with respect to Professor Schneier?

17 A. Professor Schneier's report, yes.

18 Q. And then one is regarding Mr. Keegan's
19 report; right?

20 A. I believe that's true, yes. 12:17:02

21 Q. Okay. And so you reviewed Professor
22 Schneier's opening report; correct?

23 A. Yes.

24 Q. Was there anything in Professor Schneier's
25 opening report that you agreed with? 12:17:16

1 A. That's a too general of a question to ask
2 me now.

3 Q. Anything that you recall that you agreed
4 with from that report?

5 A. I don't recall all of the details of the 12:17:24
6 report, so it's very hard to answer that question.

7 Q. Okay.

8 And same question with respect to
9 Mr. Keegan's report, anything you can recall that
10 you agreed with? 12:17:36

11 A. I agree that -- that in general using
12 Dynata's sample was a -- a good idea.

13 Q. Okay. So we're in agreement on using
14 Dynata; right?

15 A. Yes, we are. 12:17:47

16 Q. Okay. Is it correct that your
17 disagreement with Professor Schneier's opinions is,
18 in part, based on the three surveys you conducted
19 that we discussed previously?

20 A. Some of my opinions, and I state when -- 12:18:06
21 when that's relevant, are exactly based on the
22 notion that Professor Schneier raises opinions that
23 are not actually backed by in-context data. And I
24 have in-context data. And so that raised my
25 objection to the claims made. 12:18:25

1 Q. Right.

2 So, for example, paragraph 4 that's
3 describing your first rebuttal opinion, you
4 referenced your "Interpretation Study"; right?

5 A. Yes. 12:18:36

6 Q. And then for paragraph 7 regarding your
7 third rebuttal opinion, you reference your "Consumer
8 Perceptions and Expectations Study"; right?

9 A. Which paragraph again?

10 Q. Paragraph 7. 12:18:54

11 A. Yes.

12 Q. And you reference your "Consumer
13 Perceptions and Expectations Study" again in
14 paragraph 8; right?

15 A. Yes. 12:19:05

16 Q. And so in this "EXECUTIVE SUMMARY," you
17 identify the various opinions -- the various
18 rebuttal opinions that are tied to your prior
19 studies; right?

20 MS. OLSON: Objection to the form. 12:19:21

21 THE WITNESS: Yes. So as I mentioned,
22 some of them are based on my three empirical
23 studies, and I -- and I note exactly where.

24 BY MR. REBLITZ-RICHARDSON:

25 Q. Right. 12:19:30

1 A. Some of them are -- are not.

2 Q. Okay. Is it your position that Professor

3 Schneier's opinions are inconsistent with findings

4 from in- -- internal Google documents?

5 A. I believe in my report I mention exactly 12:19:42

6 where Mr. Schneier's opinions are contradicted by

7 specific documents that I looked at.

8 I -- I must say, though, that my task is a

9 little easier than Professor Schneier's. He's

10 trying to make some overarching claims, and so it's 12:20:03

11 sufficient to find evidence that refutes that claim

12 to say, you know, clearly his claim is not true

13 everywhere, whereas his opinions that are based on

14 anecdotes from some of the Google documents that he

15 cites are -- are just that, they're anecdotes. And 12:20:24

16 from anecdotes to generalizations is long, long

17 distance and usually incorrect.

18 Q. Let me just focus your attention on

19 paragraph 13. Do you see where you wrote,

20 "Mr. Schneier's opinions and claims regarding class 12:20:40

21 members' expectations (Schneier Opinions 10, 11, 12,

22 and 13) are not only contradicted by my empirical

23 studies, but they are also inconsistent with

24 findings from internal Google and public documents"?

25 Do you see that? 12:21:00

1 A. Yes.

2 Q. In preparing this rebuttal report, did you
3 evaluate the extent to which Professor Schneier's
4 opinions were consistent with internal Google
5 documents?

12:21:13

6 A. I'm not sure exactly what your question
7 is, so let me try to answer, and let me know if
8 it's -- if it's your question.

9 In order to conclude, as I did, that this
10 particular opinion or these four opinions for
11 Mr. Schneier are not consistent with -- with
12 findings from Google and public documents, I of
13 course evaluated the consistency between his
14 claim -- general claim, overarching claim, and
15 evidence that exists in those documents.

12:21:27

12:21:47

16 Q. And -- and why did you do that? Why did
17 you evaluate whether Professor Schneier's opinions
18 were consistent with findings from internal Google
19 documents?

20 A. So -- so, first, they're inconsistent with
21 my empirical studies. But then Professor Schneier
22 cherry-picks anecdotes from Google documents.

23 And so by going to Google documents, I
24 wanted to see if -- if his opinions are backed by
25 all evidence presented in Google documents.

12:22:01

12:22:22

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1 And, as I said before, it's -- from my
2 position, it's sufficient to say, "Oh, wait a
3 minute. Here are evidence that are inconsistent
4 with his claim from these documents," meaning his
5 overarching generalized claim cannot be true. 12:22:34

6 Q. So you were looking for documents that
7 were inconsistent with Professor Schneier's
8 opinions; is that correct?

9 MS. OLSON: Objection. Objection.

10 Misstates the testimony. 12:22:46

11 THE WITNESS: Yeah, it's not exactly.
12 I -- sometimes I look at the documents cited by
13 Mr. Schneier and in other places in that document,
14 the evidence is simply inconsistent with his claim.

15 BY MR. REBLITZ-RICHARDSON: 12:22:56

16 Q. In Amir Exhibit 2, what is Appendix C. It
17 has "Materials Relied Upon" at the top there --
18 (Interruption in audio/video.)

19 THE COURT REPORTER: Excuse me. There was
20 some audio -- something going on over there that I 12:23:14
21 couldn't hear the entirety of the --

22 THE WITNESS: I couldn't hear you, either.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. What is Amir Exhibit 2, Appendix C, which
25 is the last page of the PDF? 12:23:20

1 A. Let me go there.

2 So I don't know what Exhibit 2 is. But
3 are you talking to Appendix -- about Appendix C?

4 Q. Sorry.

5 Amir Exhibit 2 is your rebuttal report -- 12:23:39

6 A. Oh, yes.

7 Q. -- correct?

8 A. Yes. Appendix C --

9 Q. Appendix C to your Amir Exhibit 2, what is
10 that? 12:23:47

11 A. Appendix C lists the materials I
12 investigated and relied upon in forming this
13 rebuttal report.

14 Q. Right.

15 Do you see there where you have a section 12:23:58
16 titled "Bates-Stamped Documents"?

17 A. I do.

18 Q. And you have 11 documents there; right?

19 A. Yes.

20 Q. And who identified the 11 Bates-stamped 12:24:06
21 documents included there in Appendix C?

22 A. So I don't remember by heart is whether
23 some of them are cited by Mr. Schneier himself. And
24 others might have been brought when I asked my
25 support team, my research assistants, to say, Can we 12:24:28

1 locate documents that address this issue.

2 Q. Did you yourself run any searches for
3 internal Google documents?

4 A. I didn't run a search for internal Google
5 documents. I looked within Google documents that 12:24:45
6 were either cited by Mr. Schneier or that my
7 research assistants suggested may be relevant.

8 Q. And who -- who were the research
9 assistants that were doing that work?

10 A. These are the team of people I mentioned 12:25:00
11 before from Analysis Group.

12 Q. The three people from Analysis Group; is
13 that right?

14 A. Haimin, Brad and Harriet.

15 Q. If anyone was searching for documents for 12:25:14
16 you, it would have been one of those three people;
17 is that right?

18 A. Yes.

19 Q. Were you ever granted full access to all
20 internal Google documents produced in this 12:25:26
21 litigation?

22 A. I did not request it.

23 Q. Do you know whether or not those three
24 individuals received full access to those internal
25 Google documents produced in this litigation? 12:25:39

1 A. I do not.

2 Q. When you say that certain of Professor
3 Schneier's opinions are inconsistent with findings
4 from internal Google documents, what documents are
5 you referencing? 12:25:50

6 A. We should go to -- to my report.

7 You said this was paragraph 7. Let me get
8 there slowly. I'll tell you where I'm -- where I'm
9 at. Paragraph 7 speaks about Opinion 3. So let me
10 go to Opinion 3. 12:26:20

11 Sorry. It's hard to scroll over this
12 DocuShare. I guess I structured it a little
13 differently, so we'll have to scroll through all of
14 it.

15 Q. Perhaps I can direct your attention to 12:27:21
16 page 38 where you have the sub
17 header "Mr. Schneier's Opinions and Claims Regarding
18 Class Members' Expectations are Not Consistent with
19 Internal Google and Public Documents."

20 Is that the section you're looking for? 12:27:35

21 A. Perhaps. Let me go there and see.

22 Yeah, we could start there. So...

23 Q. I want you to identify for me the internal
24 Google documents that you believe are inconsistent
25 with Mr. Schneier's opinions. 12:28:08

1 A. So Footnote 110 --

2 Q. Okay.

3 A. --- lists a document and the locations of
4 where I looked in that document that I'm referring
5 to exactly.

12:28:35

6 Q. Okay. Other than the one document
7 identified in Footnote 110, are there any documents
8 that you believe -- any internal Google documents
9 that you believe are inconsistent with Professor
10 Schneier's opinions and claims regarding class
11 members' expectations?

12:28:55

12 A. Well, I think Footnotes 111 to 113 note to
13 another document.

14 Q. Okay. Other than the two documents
15 identified in Footnotes 110 through 113, are there
16 any other internal Google documents that you contend
17 are inconsistent with Professor Schneier's opinions
18 and claims regarding class members' expectations?

12:29:13

19 A. Give me a second. The next document is a
20 public thing. So I say -- and you're saying with
21 Google and public. So this --

12:29:36

22 Q. Right.

23 A. -- a public document that Schneier lists.

24 Q. Can you focus on my question?

25 A. Yeah.

12:29:44

1 Q. I'm asking about internal Google documents
2 because that's what you referred to. You
3 referred --

4 A. Well, in --

5 Q. -- to internal Google documents. 12:29:49

6 A. So, you know, at least these -- these two
7 documents for sure. I didn't review the entire
8 report. You directed me to the section. So I don't
9 know if I mentioned others in other sections. But
10 in this section, it's definitely these two documents 12:30:01
11 in several locations in one of them.

12 Q. Do you need a few minutes to review your
13 report and see if you can identify anything else in
14 your report that you claim is an internal Google
15 document that is inconsistent with Mr. Schneier's 12:30:12
16 opinions and claims regarding class member
17 expectations?

18 A. I could.

19 So in Footnote 132, there are two
20 documents mentioned. And a third -- I guess that's 12:30:46
21 a deposition.

22 Q. Does that have anything to do with your
23 opinion that Mr. Schneier's opinions and claims
24 regarding class member expectations are not
25 consistent with internal Google documents? 12:31:16

1 A. Well, you said "Mr. Schneier's opinions."
2 This one is regarding privacy. It's not regarding
3 the expectations.

4 Q. Right.

5 I'm focused on the class member 12:31:32
6 expectations.

7 A. So I think those two documents are the
8 ones I refer to.

9 Q. Okay. And those are referred to in
10 paragraph -- is it 57? 12:31:40

11 A. Let me go back. Sorry. I scrolled away
12 to look at the next. This is 57 and 58.

13 Q. Okay. And going back to paragraph --
14 well, let me just -- let me just ask.

15 Is it your opinion that Google's internal 12:32:06
16 documents show that users generally understand that
17 Google receives their data while they're in private
18 browsing mode?

19 A. I think that is you look at the -- at the
20 Google documents, at least those that I looked at, 12:32:21
21 you get an interesting picture of a mixed -- mixed
22 answer to your question.

23 There's -- there's ev- -- there's
24 certainly evidence, anecdotal in most of the
25 documents by the way, that some users do and 12:32:35

1 anecdotes that some users don't. It's very hard to
2 scientifically rely on these documents because we
3 don't know how this data was generated. We don't
4 know, for example, if Google interviewed the users
5 that most care about privacy to -- to see what they 12:32:51
6 think or -- or not.

7 So personally as a -- as in kind of a
8 professional conduct, I wouldn't rely on these
9 documents to form a general, overarching opinion
10 because we don't know how this data was generated. 12:33:10

11 But when you look at the documents, and
12 this is my point in my -- in my rebuttal report, you
13 see a mixture. So you see what's -- you know, I --
14 I don't claim that -- that Mr. Schneier reports what
15 he reports falsely, but I -- he definitely cherry 12:33:29
16 picks and doesn't look at the -- the entirety of the
17 data to come up with a generalized, overarching
18 conclusion because he's ignoring, you know, anec- --
19 just as -- just as relevant anecdotal evidence
20 that -- that are inconsistent with his general view. 12:33:48

21 Q. Right.

22 But my question was simply whether it's
23 your opinion that Google's internal documents show
24 that users generally understand that Google receives
25 their data while they are in private browsing mode. 12:34:04

1 A. And I re- --

2 MS. OLSON: Objection. Asked and
3 answered.

4 THE WITNESS: Yeah. And I responded that

5 there is no evidence that suggests any general 12:34:11
6 understanding that is reliable in these documents.

7 So your question assumes and sort of is -- is
8 relying on a -- on a false assumption.

9 BY MR. REBLITZ-RICHARDSON:

10 Q. So the -- the -- the documents don't 12:34:24
11 establish any general understanding as to whether or
12 not Google receives users' data while they're in
13 private browsing mode; is that right?

14 MS. OLSON: Objection to the form.

15 THE WITNESS: That is close to what I 12:34:39
16 said. I said that the -- what the documents show is
17 anecdotal evidence of quite a wide heterogeneity of
18 responses to the various probes from Google or third
19 party, we don't know or third-party entities that
20 Google employed with respect to understanding of 12:34:57
21 private browsing, so -- such that there is no one
22 general view that you can conclude, which was my
23 point about Mr. Schneier's opinion.

24 BY MR. REBLITZ-RICHARDSON:

25 Q. Okay. So having reviewed Google's 12:35:12

1 internal documents, it's your opinion that they do
2 not establish any general -- general understanding;
3 is that right?

4 MS. OLSON: Objection. Asked and
5 answered.

12:35:22

6 THE WITNESS: Yeah. I say that the only
7 general understanding that you can conclude is that
8 there is vast heterogeneity in responses to their
9 questions about this.

10 BY MR. REBLITZ-RICHARDSON:

12:35:33

11 Q. Are you intending to offer the opinion in
12 this case that Google's internal documents show that
13 users generally understand that Google receives
14 their data while they're in private browsing mode?

15 A. So I intend to offer the opinions that I
16 offered in my opinion report. So if I'm going to
17 offer an opinion, which I have, that what you find
18 is pretty large heterogeneity in perceptions, it's
19 going to rely on my studies, not on anecdotal
20 evidence from Google, which we do not know what
21 generated that information.

12:35:48

12:36:04

22 Q. Right --

23 (Simultaneous speaking.)

24 (Interruption in audio/video.)

25 A. Knowing some of these things, whether they 12:36:11

1 were surveys or interviews. We -- we -- you know,
2 it's -- it's basically, from a -- you know, from a
3 professional perspective, it's unreliable data.
4 It's anecdotes. It's suggestive. It can inform and
5 it should inspire doing formal market research, 12:36:26
6 which I have done. But it's not something I would
7 read and draw some overarching conclusions for.

8 Q. Right.

9 I understand that you're intending to
10 offer opinions based on your three studies; right? 12:36:35
11 Now, I also understand that you've
12 reviewed some internal Google documents, and you
13 reference 11 in Amir Exhibit 2; correct?

14 A. Yes.

15 Q. And my question is whether or not you're 12:36:50
16 intending to offer an opinion in this case, based on
17 your review of those internal doc- -- Google
18 documents, that users generally understand that
19 Google receives their data while they are in private
20 browsing mode, or if you're just going to be 12:37:04
21 offering this opinion that there is heterogeneity.

22 Do you understand the difference?

23 A. I -- of course I understand the
24 difference.

25 And I -- 12:37:13

1 Q. So --

2 A. -- I -- I think I answered this more than
3 once, but I'll try again. What I can tell for sure
4 from these Google documents is that what they
5 reflect or represent is heterogeneity of
6 understandings.

12:37:23

7 It may -- in some sense, Mr. Schneier says
8 they -- they -- they imply some generalization, and
9 I say, no, they do not. In a -- in fact, the only
10 generalizations you could try to -- to make, which I
11 will not because this data is not re- -- what I
12 would call reliable data, is that there is
13 heterogeneity. And so at best, it raises the
14 hypothesis that there is heterogeneity, which should
15 be tested with primary data in context.

12:37:42

12:37:56

16 Q. Do you use the word "heterogeneity" in
17 your report?

18 A. I don't remember if I use that term or
19 not. I can search for it.

20 Q. You -- you identified the two documents
21 that you cite in paragraph 57. I'd like to look --
22 you -- you reviewed these documents in preparation
23 for your deposition; right, the 11?

12:38:13

24 A. Yes.

25 Q. Okay. So you're familiar with these

12:38:30

1 documents?

2 A. I reviewed them.

3 Q. And you -- you -- you wanted to make sure
4 that there wasn't any errors in your report based on
5 your -- your review of those documents; right? 12:38:39

6 MS. OLSON: Objection to the form.

7 THE WITNESS: Yes.

8 BY MR. REBLITZ-RICHARDSON:

9 Q. All right.

10 MR. REBLITZ-RICHARDSON: Can we -- and I 12:38:47
11 guess I'm going to ask whether or not Dina can mark
12 as Exhibit 4, what is Tab 5, which is the document
13 with GOOG-CABR-00422093. And it's cited in Footnote
14 110.

15 (Amir Deposition Exhibit 4 was marked 12:39:22
16 electronically.)

17 BY MR. REBLITZ-RICHARDSON:

18 Q. Professor, are you seeing an exhibit?

19 A. Wait one second.

20 MR. REBLITZ-RICHARDSON: I guess Dina will 12:39:27
21 tell us when it's moved over?

22 THE WITNESS: It's not yet.

23 THE CONCIERGE: It's loading in now.

24 MR. REBLITZ-RICHARDSON: And, Dina, are
25 you able to put Exhibit 4 up on the screen so that 12:39:43

1 we can go to a few pages here?

2 THE CONCIERGE: Yes, I can.

3 BY MR. REBLITZ-RICHARDSON:

4 Q. Professor Amir, do you have what's marked
5 as Exhibit 4 in front of you? 12:39:55

6 A. Not yet.

7 Q. Did you press refresh?

8 A. I did. It's not here.

9 MS. OLSON: I don't see it, either.

10 THE WITNESS: Now it's there. 12:40:04

11 BY MR. REBLITZ-RICHARDSON:

12 Q. Can you open that up and tell me whether
13 Exhibit 4 is the first of the two documents you cite
14 in paragraph 57?

15 A. I don't remember, to be honest. It's not 12:40:16
16 marked -- oh, wait a minute. GOOGLE CABR '442093
17 [verbatim], yes.

18 Q. Okay. And you -- you reviewed this
19 document in preparation for your deposition here
20 today? 12:40:33

21 A. I reviewed it when I prepared my reports.
22 I didn't review it in preparation for deposition.

23 Q. Does this document include any mention of
24 incognito anywhere?

25 A. I don't know. Do you want me to read the 12:40:44

1 entire document?

2 Q. Well, I was just wondering. I -- I mean,
3 I -- I don't want to read every word. I'm just
4 wondering whether you can tell me whether this has
5 any mention anywhere of incognito or private 12:40:53
6 browsing.

7 A. Again, I would have to read it in order to
8 respond.

9 Q. Okay. Did you talk to any Google 12:41:04
10 employees about this document?

11 A. I think you asked me in the beginning have
12 I asked any Google employees, period, and I said
13 "No." So I certainly didn't talk to them about this
14 document.

15 Q. Let's go to the page ending -- I'm going 12:41:16
16 to refer to the last three numbers on the bottom
17 right.

18 So I'm going to ask to go to the page
19 ending '097.

20 Does this -- is this a slide you're -- 12:41:34
21 you're recalling as part of your review?

22 A. Yes.

23 Q. And do you see the third point there where
24 it states " [REDACTED]" ? 12:41:47

1 A. I see it -- I see the sentence.

2 Q. Yeah.

3 Was one of -- was that one of the findings
4 reported in this internal Google document that you
5 cite in your report? 12:41:56

6 A. I'm not sure. It's a very vague
7 statement. We could probably go to that page to see
8 more explanation, which is page '100.

9 Q. So page '100 has more explanation of that
10 statement? 12:42:17

11 A. I -- I believe so, if I understand the
12 document correctly. It's that " [REDACTED]
13 [REDACTED], " which, I think, is
14 the beginning of the sentence you pointed out.

15 Q. Right. 12:42:30

16 And I -- I -- I was going to the page
17 ending in '115. Let's -- let's go there and see if
18 that triggers any recollection for you.

19 And you see that says "US: Cultural
20 alignment" at the top left? 12:42:57

21 A. '115, yes.

22 Q. Right.

23 And you see on the right, there's a set of
24 text with "COMPREHENSION" at the top?

25 A. Yeah. 12:43:06

1 Q. And under "COMPREHENSION," do you see
2 where the Google employees are saying in this
3 document that "██████████" in the
4 United States?

5 MS. OLSON: Objection to the 12:43:16
6 characterization of the document.

7 THE WITNESS: Yeah, I -- I see this -- I
8 see this on the slide. I don't know if Google
9 employees are saying that.

10 BY MR. REBLITZ-RICHARDSON: 12:43:25

11 Q. Well, what do you understand that to be
12 referring to, "██████████," under
13 "COMPREHENSION"?

14 A. I'm not sure; right? And that's -- that's
15 part of my point. Most of these documents are -- 12:43:35
16 you know, if you wanted to come up with some
17 generalization, are not very useful because it's
18 hard to tell what, exactly, they're referring to and
19 what data they're actually relying on.

20 Q. Well, does this document show that Chrome 12:43:50
21 users understand their data is being collected?

22 A. I don't believe that I use the document in
23 this way. I think that if you go back to my report,
24 I say "Internal Google documents show that Chrome
25 users understand their data is being collected, and 12:44:09

1 they're also aware of the benefits and have become
2 accustomed to data collection for enhanced
3 performing personalized ads" --

4 THE COURT REPORTER: Excuse me. Could you
5 slow down. I didn't get the end of that. 12:44:21

6 THE WITNESS: Sorry. Where did I -- where
7 did I los- -- where did I lose you?

8 (Record read back by the reporter.)

9 THE WITNESS: So I'll start with internal.
10 So "Internal Google documents show that Chrome users 12:44:44
11 understand their data is being collected, and they
12 are also aware of the benefits and have become
13 accustomed to data collection for enhanced
14 performance and personalized ads."

15 And in Footnote 110, I cite several 12:44:56
16 places. So if you want to go to '182 -- sorry.
17 There was '98, '99, '102, and '182, which I cite to.

18 '98 says, " [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED] 12:45:24
21 [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED]
24 [REDACTED]"
25 And then it says, "We have come to terms 12:45:42

1 with the fact that companies are going to have
2 profiles of us. If they can use that to our
3 advantage in some way, so be it." So that's --
4 BY MR. REBLITZ-RICHARDSON:

5 Q. So that last part you just read, what -- 12:45:51
6 what does that mean, "London"?

7 A. My guess is that it's a -- it's a quote
8 from someone because it has quotation marks under
9 it. But the conclusion for whoever wrote
10 this generated this presentation is -- is on top. 12:46:09

11 And it says, " [REDACTED]

12 [REDACTED]
13 [REDACTED], " which I think when I say in my study
14 "and has become accustomed to data collection for
15 enhanced performance and personalized ads," that's 12:46:23
16 exactly one point that I mention. And if you go
17 to --

18 Q. Well, just -- just stay on this slide for
19 a second.

20 Does this have anything to do with your 12:46:32
21 assertion that Chrome users understand their data is
22 being collected?

23 A. Chrome users understand their data is
24 being collected. If -- you know, we -- we have to
25 make -- when we read this, we have to make 12:46:46

1 assumptions. The assumption is that this document
2 relates to Chrome, which is consistent with other
3 places in the -- in the document, and -- and I think
4 that this is one. And as I said, I -- I cite four
5 points for this point, so let me --

12:47:03

6 Q. Before you go on to another slide, I want
7 to make sure that you're saying there's two clauses
8 in your sentence in paragraph 57; right?

9 A. Yes.

10 Q. And so you're saying this references the
11 second clause about performance and personalized
12 ads; is that right?

13 MS. OLSON: Objection. Misstates the
14 testimony.

15 THE WITNESS: I said that -- I used --
16 your -- my sentence is based on four places in this
17 document -- or three places in this document.
18 Sorry. That was one. Here is another.

19 So if you go to '99, " [REDACTED]

20 [REDACTED] 12:47:40
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 So that was the second point I used. 12:47:57

1 And then if I go to '102 --

2 BY MR. REBLITZ-RICHARDSON:

3 Q. Well, I want to take these one at a time.

4 A. Okay.

5 Q. So the -- the second --

12:48:03

6 A. And --

7 (Simultaneous speaking.)

8 (Interruption in audio/video.)

9 THE COURT REPORTER: Excuse me.

10 THE WITNESS: The part of the same
11 presentation.

12 THE COURT REPORTER: Wait. One second.

13 I'm getting speaking over and it's actually muting
14 you both out. So if we could slow down, please.

15 Thank you.

12:48:15

16 BY MR. REBLITZ-RICHARDSON:

17 Q. Before we leave this slide, I want to ask
18 some questions about this slide.

19 Is that okay?

20 A. I don't think it's okay because you're
21 trying to break an argument that I relied on three
22 points together into -- and then you say, But this
23 doesn't say the whole thing. Of course, it's not
24 because I relied on three points. I want to share
25 the three points. And I wanted to show you the

12:48:20

12:48:34

1 three points that I relied on as you requested.

2 Q. Go ahead.

3 A. My third point relies on slide -- which I
4 guess is page '102, which says, " [REDACTED]

5 [REDACTED] [REDACTED] 12:48:46

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED] " --

9 THE COURT REPORTER: Sir, you have to slow
10 down if you're reading into the record, please. 12:48:59

11 THE WITNESS: Sorry.

12 " [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] 12:49:13

16 [REDACTED] [REDACTED] "

17 end quote.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. Are you done?

20 A. Yes. So -- I used these three to come up 12:49:26
21 with my conclusion in that sentence.

22 Q. Okay. Can I ask you some questions about
23 those three?

24 A. Of course.

25 Q. Any of those mention incognito anywhere? 12:49:37

1 A. These points do not mention incognito, but
2 neither does my sentence.

3 Q. Any of these slides mention private
4 browsing mode in any way?

5 A. No, but neither does my sentence. My 12:49:51
6 sentence does not speak about incognito or of prior
7 browsing. My sentence says, "Internal Google
8 documents show that Chrome users."

9 Q. Does anything in this document support any
10 assertion -- oh, scrap that. 12:50:10

11 Two of these are quotes from London and
12 Paris; right?

13 A. Actually, I didn't read the quotes now
14 when I read them. I just read the conclusions for
15 whoever generated the slides from Google. 12:50:25

16 Q. The three slides you quo- -- you cited
17 include quotes from Paris and London; correct?

18 A. Yes. And I did not read them. I mean, I
19 read the first one from London. But afterwards, for
20 the two additional slides, I did not read the 12:50:35
21 quotes. I just read the conclusion.

22 Q. Right.

23 And you didn't cite the slide on the page
24 ending '115 that we looked at, that showed that
25 understanding is fairly low in the United States; 12:50:45

1 right?

2 A. So --

3 MS. OLSON: Objection to the
4 characterization of the document.

5 BY MR. REBLITZ-RICHARDSON:

12:50:52

6 Q. Let's go back to '115. I'm not trying to
7 mischaracterize it. Let's go back to '115.

8 Did you cite the page ending '115 in your
9 report?

10 A. I did not cite the page ending in '115.

12:51:04

11 Q. Okay. In assessing the application of
12 this document, the relevance of this document, did
13 you look at the slide ending in '115?

14 A. I looked at the entire exhibit.

15 Q. Okay. And you understand that this slide
16 focuses on U.S. users of Chrome; correct?

12:51:19

17 A. It says "U.S. Cultural Alignment." I
18 assume this is U.S. users of Chrome, but that's an
19 assumption.

20 Q. And -- and here, with respect to the U.S.,

12:51:34

21 whoever prepared this presentation wrote

22 "██████████ . ." Correct?

23 MS. OLSON: Objection to incompletely
24 quoting the document.

25 THE WITNESS: Yeah. So the sentence

12:51:51

1 starts with " [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]"
5 What -- and then it says "WHAT THIS 12:52:08
6 MEANS." Is it -- means, " [REDACTED]
7 [REDACTED]
8 [REDACTED]"
9 BY MR. REBLITZ-RICHARDSON:
10 Q. That reference to " [REDACTED] , " 12:52:14
11 that's talking about American's understanding of
12 Google's data collection; right?
13 MS. OLSON: Objection. Calls for
14 speculation.
15 THE WITNESS: Yeah, I have no idea that 12:52:22
16 that's true.
17 BY MR. REBLITZ-RICHARDSON:
18 Q. You -- you have no idea what it means when
19 it says " [REDACTED]
20 [REDACTED]" in this slide talking about 12:52:30
21 U.S. Chrome users?
22 MS. OLSON: Same objection.
23 THE WITNESS: Yeah, it -- it doesn't say
24 what exactly is the [REDACTED] relating
25 to. It just -- and if you -- if you look at the 12:52:42

1 conclusion, the conclusion is, " [REDACTED]
2 [REDACTED]
3 [REDACTED]"

4 So what -- what I take from that is,

5 [REDACTED] 12:52:54
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED].

10 BY MR. REBLITZ-RICHARDSON: 12:53:15

11 Q. And do you agree that honesty is
12 important?

13 A. We already covered it. I -- I -- I
14 completely agree that honesty is important.

15 Q. Are you aware that Google employees have 12:53:25
16 discussed internally how Incognito is effectively a
17 lie?

18 MS. OLSON: Objection to the form.

19 THE WITNESS: Yeah, I -- I've -- I 12:53:39
20 might have seen this mentioned in a document. But
21 that's anecdotal evidence from -- from someone. It
22 doesn't -- when you say "Google employees think,"
23 you're making a generalization, which I -- I doubt
24 is true, but I've now seen evidence for.

25 BY MR. REBLITZ-RICHARDSON: 12:53:57

1 Q. Do you even know which Google employee
2 wrote that Incognito is effectively a lie?

3 MS. OLSON: Objection. Assumes facts.

4 THE WITNESS: Yeah, when I -- when I --
5 when I read what you're referring to, I might have 12:54:07
6 read it in Mr. Schneier's report. And I think
7 Mr. Schneier mentions a name. I certainly don't
8 remember it by heart.

9 BY MR. REBLITZ-RICHARDSON:

10 Q. Are you aware that Google has produced an 12:54:21
11 internal document describing Incognito branding as
12 misleading?

13 MS. OLSON: Objection to the form.

14 THE WITNESS: Yeah, I mean, only if it
15 was -- if it was mentioned in Mr. Schneier's report. 12:54:33

16 BY MR. REBLITZ-RICHARDSON:

17 Q. Well, was that mentioned in Mr. Schneier's
18 report?

19 A. I don't remember it by heart. Do you want
20 us to go and look for it in Mr. Schneier's report? 12:54:42

21 Q. No. I'm just trying to understand what
22 you recall.

23 A. Yeah. So, you know, Mr. Schneier, as I
24 said, picks various anecdotes, and that -- what
25 you're describing is exactly what I would call an 12:54:54

1 anecdote, and tries to make vast overarching
2 generalizations, which is a practice that's
3 nonscientific and unreliable.

4 At best, Mr. Schneier's quote/unquote 12:55:09
5 opinions are hypotheses that need to be tested.
6 Most of them can empirically be tested, some of
7 which I've done myself. Some of which are
8 inconsistent with scientific and, you know,
9 textbooks and best practices, and I try to note that
10 all in my response to some of Mr. Schneier's 12:55:29
11 opinions.

12 Q. In terms of developing your opinion as to
13 whether or not Mr. Schneier's opinions are
14 consistent or inconsistent with Google documents,
15 internal Google documents, did you review the 12:55:45
16 document produced by Google that describes the
17 Incognito branding as misleading?

18 MS. OLSON: Objection to the form.

19 THE WITNESS: Again, I -- I think that
20 you -- you know exactly what I reviewed because I 12:55:58
21 cite it. So you know the answer to that. But my
22 point is very -- you know, I'll repeat it again. If
23 somebody's making an overarching generalization
24 hypothesis, in order to see whether that's true, you
25 need to see whether there's -- there's -- there 12:56:16

1 exists evidence or anecdotes -- because, you know,
2 Mr. Schneier treats anecdotes as evidence --
3 that's -- are inconsistent with that.

4 And I cite to two documents that contain
5 anecdotes that are inconsistent with that. The 12:56:32
6 burden of proof, when you try to generalize, is on
7 the person trying to generalize. And when you find
8 existence of contradicting evidence, that suggests
9 their generalization might not be true.

10 BY MR. REBLITZ-RICHARDSON: 12:56:51

11 Q. So you didn't feel an obligation to review
12 everything that Mr. Schneier cited. You felt like
13 you only needed to determine whether or not there
14 was evidence inconsistent with that. Is that fair?

15 MS. OLSON: Objection to the form. 12:57:03

16 THE WITNESS: So I -- I -- at the time
17 when I -- I looked at what Mr. Schneier cites,
18 but -- but, yes, the -- the question of do you
19 believe a hypothetical empirical generalization with
20 no empirics only requires you to find evidence 12:57:16
21 that's inconsistent with it to say, you know what, I
22 do not believe it with -- with enough confidence.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. You just said you reviewed what
25 Mr. Schneier's -- what Mr. Schneier cites. 12:57:29

1 A. I said I may have reviewed what
2 Mr. Schneier cites.

3 Q. But only if it's within the 11 cited in
4 your appendix here; right?

5 A. I relied on these 11 while forming my 12:57:40
6 opinion. That doesn't mean I did -- I reviewed
7 other documents and felt they were not relevant to
8 my opinion.

9 Q. Well, did you review the documents cited
10 by Professor Schneier? 12:57:50

11 A. As I -- and I said, I reviewed many of
12 them, and they were not relevant to my opinion.

13 Q. Did you bother to read the document, the
14 internal Google document, where a Google employee
15 described Incognito as effectively a lie? 12:58:06

16 A. I --

17 MS. OLSON: Objection to form.

18 THE WITNESS: I think I -- you know, I
19 recall that mentioned. And as I said, I don't
20 remember if I read the entire document or I remember 12:58:17
21 it from Schneier's report. And I'm trying to give
22 you an accurate response. So I don't remember.

23 But that anecdote is irrelevant because
24 you can't from -- from an anecdote like that, draw
25 an overarching conclusion unless all the evidence 12:58:31

1 suggests that you may be right. And so, all I
2 needed to do is ask myself, is it true that all the
3 evidence suggests that Mr. Schneier's claim is --
4 is -- is valid and -- and very quickly found out
5 that even some of the same documents that he refers 12:58:48
6 to do not.

7 BY MR. REBLITZ-RICHARDSON:

8 Q. Right.

9 And these are the two we're looking at, we
10 looked at one; right? 12:58:56

11 A. Yep.

12 Q. And that one included slides you cited
13 that don't mention Incognito or private browsing
14 anywhere; right?

15 A. Again, I think you're -- you're 12:59:02
16 mischaracterizing my opinion. In -- in chap- --
17 in -- in paragraph 57, the -- the sentence that
18 you're trying to unpack says, "Internal Google
19 documents show that Chrome users understand their
20 data is being collected, and they're also aware of 12:59:19
21 the benefits and have become accustomed to data
22 collection for enhanced performance and personalized
23 ad."

24 Nowhere in the sentence did I mention
25 Incognito, and nowhere in the sentence did I 12:59:31

1 mention, you know, anything but Chrome users as the
2 population for which the Google documents provide
3 some information for.

4 Q. So fair to say that you're not citing,
5 what we have here as Exhibit 4, as relevant to the 12:59:48
6 issue of private browsing; is that right?

7 MS. OLSON: Objection to the form.

8 THE WITNESS: As I -- as I said, in this
9 sentence, I do not.

10 BY MR. REBLITZ-RICHARDSON: 01:00:06

11 Q. Okay. Can we look at the next one. I
12 know you have another document cited in Footnote 111
13 through 113. And I want to make sure you get a
14 chance to look at that one as well.

15 Okay? 01:00:17

16 A. Okay.

17 MR. REBLITZ-RICHARDSON: So, let's mark as
18 Exhibit 5, what is Tab 6, and that is
19 GOOG-BRWN-00156752. And, Professor, would you
20 please let me know when you have that up. 01:00:29

21 THE WITNESS: Will do. It's not there
22 yet.

23 (Amir Deposition Exhibit 5 was marked
24 electronically.)

25 THE CONCIERGE: Counsel, would you like me 01:01:32

1 to pull this up on the screen as well?

2 MR. REBLITZ-RICHARDSON: Yes, please.

3 THE WITNESS: I'm not there yet, sorry.

4 Now it's there. I have it.

5 BY MR. REBLITZ-RICHARDSON: 01:01:43

6 Q. Professor Amir, is Exhibit 5 the second
7 document you cite in paragraph 57?

8 A. Yes.

9 Q. And did you talk to any Google employees
10 about this document? 01:01:55

11 A. Same answer to the previous question. I
12 did not talk to any Google employees in the
13 preparation for this reports [verbatim].

14 Q. And what is this document?

15 A. This appears to be a -- kind of some 01:02:11
16 report on research on Incognito in the context of
17 the Google brand from 2019.

18 Q. Okay. Unlike Exhibit 4, this one actually
19 talks about Incognito specifically; right?

20 MS. OLSON: Objection to the form. 01:02:35

21 THE WITNESS: This talks about Incognito
22 specifically.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. All right.

25 MR. REBLITZ-RICHARDSON: Can we go to the 01:02:41

1 page ending in '788.

2 THE WITNESS: But I cite '782.

3 BY MR. REBLITZ-RICHARDSON:

4 Q. We'll get there.

5 A. Okay. 01:02:48

6 Q. Would you like to go there first?

7 A. It doesn't matter. You're the -- you're
8 the one asking the questions.

9 Q. Well, I think you're going to lead me
10 there. So let's go to '782 first. 01:02:56

11 A. Okay. Getting there in a second.

12 MR. REBLITZ-RICHARDSON: We need to get us
13 there.

14 THE WITNESS: '782, I'm there.

15 BY MR. REBLITZ-RICHARDSON: 01:03:09

16 Q. All right.

17 And so, for what -- what purpose were you
18 citing this '782 page?

19 A. Yeah, so back to my reports, the sentence,
20 I'm going to read it slowly. "Consumers" -- sorry. 01:03:27

21 "Consumer preferences" -- sorry again.

22 "Consumer preference and benefits are
23 context-specific and vary by individual. For
24 example, in research conducted by Google and cited
25 by Mr. Schneier, one respondent noted that Google 01:03:45

1 Chrome quote/unquote, 'cares about the user
2 experience getting a local restaurant recommendation
3 so they take the data, but you get something back.' "
4 End quote.

5 Q. And do you see that quote here in this 01:04:02
6 page?

7 A. Let me look at it.

8 Q. Do you see that under the slide "DE
9 consumer"?

10 A. Yeah. 01:04:14

11 Q. And what do you -- what do you understand
12 "DE consumer" to mean?

13 A. Consumer from Germany.

14 Q. So you're quite -- you're quoting in your
15 report what someone in Germany said; is that right? 01:04:31

16 A. Yeah, I'm -- I'm getting so -- this --
17 this study from -- that Mr. Schneier cites, wasn't
18 only done, you know, if at all, in the U.S. So it
19 shows us some consumers. Some from Germany, some
20 from England, and some from -- I don't know what DC 01:04:50
21 stands for.

22 But, yes, so I -- what I wanted to show is
23 that even the study that Mr. Schneier relies on
24 suggests that there's heterogeneity in preferences
25 and opinions. That was the point of the -- of my 01:05:13

1 sentence. If I say, consumer preference and
2 benefits are context-specific and vary by
3 individual, that means that there's heterogeneity by
4 individuals and by context. And in this study that
5 Mr. Schneier cites, you see this.

01:05:28

6 Q. So let's -- let's now go to the page I
7 wanted to go to, which is '788.

8 A. '788. Yes.

9 Q. It's right there. Do you see the blue
10 box?

01:05:44

11 A. Yes.

12 Q. It says, "The role of Incognito in our
13 brand."

14 A. Okay.

15 Q. Do you see that?

01:05:48

16 This is a slide in this Google
17 presentation that both you and Mr. Schneier cited
18 to; right?

19 A. Yes.

20 Q. Now, you see that -- that second para- --

01:05:54

21 paragraph that states, " [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]"

25 Do you see that?

01:06:16

1 A. I see that statement.

2 Q. Okay. Is that a statement you quoted in
3 your report?

4 A. No.

5 Q. Is that a statement you considered in 01:06:22
6 preparing your report?

7 A. Yes.

8 Q. Is that statement, in any way,
9 inconsistent with Professor Schneier's opinions?

10 A. No, but that's exactly my point. 01:06:33

11 Professor Schneier takes that statement and
12 overgeneralizes it. And what we find in this
13 report, if you actually look at the details, is that
14 you find heterogeneity. You find some people that
15 find this trade-off between privacy and -- and -- 01:06:51
16 and benefits of customization to be worthwhile and
17 others that probably do not. And that was my point.

18 My point is, I was not trying to make
19 overgeneralization claim. I was trying to show that
20 the overgeneralization claim made by Mr. Schneier is 01:07:09
21 actually incorrect. It's incorrect to
22 overgeneralize anecdotes if some of the anecdotes
23 don't agree with you.

24 Q. Are there any anecdotes on this slide?

25 A. This slide does not provide details. 01:07:22

1 Q. Do you see where --

2 A. So --

3 Q. Do you see where it continues, " [REDACTED]

4 [REDACTED]

5 [REDACTED] 01:07:33

6 [REDACTED] "

7 Do you see that?

8 A. Let me find this -- yes.

9 Q. Did you evaluate those documents?

10 A. Again --

01:07:54

11 Q. Did you ask for them?

12 A. I did not. Because this is not an opinion
13 that I was trying to make. I, as I said, can rely
14 on my data to show that there is heterogeneity. So
15 as I pointed in my affirmative report, there is a
16 small proportion of users that actually don't seem
17 to understand what private browsing does. And I --
18 and I measure the exact percentages there.

01:08:08

19 But what I also point out is that that's

20 not a -- an opinion or a perception shared by
21 everybody. In fact, there is -- there is quite a
22 variance of opinion. And if you want to add up some
23 groups, the group that seems to understand tends to
24 be at least 50 percent of the population with
25 respect to different questions.

01:08:29

01:08:47

1 So in that sense, I used my empirical
2 data, as I pointed out before, as the basis for
3 rejecting several of Mr. Schneier's quote/unquote
4 "opinions," which are hypotheses. And you are
5 questioning me now on the one point where I said I 01:09:08
6 even find evidence in Google documents for -- you
7 know, which means there exists evidence in Google
8 documents that is inconsistent with Mr. Schneier's
9 generalization.

10 Q. Professor Amir, is it your testimony here 01:09:24
11 today that this document somehow suggests that more
12 than 50 percent of people understand Google's
13 collection and use of private browsing information?

14 MS. OLSON: Objection. Misstates the
15 testimony. 01:09:40

16 THE WITNESS: If you hadn't said that, I
17 would have said that. That's exactly not what I
18 said. Right? Let me repeat what I said.

19 My affirmative study results suggests that
20 around 50 percent and sometimes more seem to 01:09:53
21 understand what private browsing is about. This
22 document contains anecdotes, so there exists
23 anecdotes, even in this document, that suggests that
24 people are willing to make the trade-off between
25 sharing their -- their information and the benefits 01:10:16

1 they get, which is contrary -- contrary to
2 Mr. Schneier's expressed opinion to which my
3 paragraph in my rebuttal report relates to.

4 BY MR. REBLITZ-RICHARDSON:

5 Q. Let's look at another document you cite. 01:10:33

6 MR. REBLITZ-RICHARDSON: Could we mark as
7 what will be Exhibit 6, what is Tab 8.

8 (Amir Deposition Exhibit 6 was marked
9 electronically.)

10 THE WITNESS: While -- while this is 01:11:08
11 loading, at some point, when -- when it works for
12 your questions, if we could have a restroom break,
13 that would be great. Not urgent.

14 MR. REBLITZ-RICHARDSON: Why don't we do
15 it now before we launch into this document. 01:11:19

16 THE WITNESS: Okay. All I need is five
17 minutes.

18 THE VIDEOGRAPHER: Going off the record.
19 The time is 1:11 p.m.

20 (Short recess taken.) 01:11:32

21 THE VIDEOGRAPHER: Back on the record, the
22 time is 1:19 p.m.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. Professor Amir, I have pulled up here what
25 is marked as Exhibit 6, which is also the second 01:20:17

1 document cited in Appendix C to your rebuttal
2 report.

3 Is this a document you're familiar with?

4 A. Yes.

5 Q. Do you know who created this document? 01:20:31

6 A. I'm not sure.

7 Q. Did you talk to any Google employees about
8 this document?

9 A. No.

10 Q. In April 2019, do you know whether Google 01:20:44
11 was considering rebranding Incognito?

12 MS. OLSON: Objection to the form.

13 THE WITNESS: So I don't know anything of
14 that sort. This document suggests to be one of
15 something that you might find in many companies that 01:21:05
16 I work with. And that is studies considering
17 whether some -- someone should rebrand either a
18 product, a product line, or the entire company.

19 BY MR. REBLITZ-RICHARDSON:

20 Q. And do you recall looking at this document 01:21:19
21 about the Incognito icon redesign?

22 A. Yeah. In fact, I think I cite it in my
23 report.

24 Q. Do -- do you know whether or not Google
25 redesigned the Incognito icon? 01:21:31

1 A. I do not.

2 Q. Do you know why Google was considering
3 redesigning Incognito?

4 MS. OLSON: Calls for speculation.

5 THE WITNESS: Yeah, I have no idea.

6 BY MR. REBLITZ-RICHARDSON:

7 Q. Can we go to the page ending '255.

A. Getting there. '255. I'm sorry, '355.

9 One second. Sorry.

10 Q. If you could cite shorter documents, this 01:22:17
11 would all be easier.

12 A. Sorry about that. This is not short and
13 with graphics. One second.

14 '255. Yes, I see '255.

15 Q. Right in the middle there, do you see 01:22:39
16 where it says " [REDACTED] [REDACTED]

上，

19 Q. Do you understand that to be a reference

22 THE WITNESS: It's actually -- you know,
23 in general, this document talks about the branding

24 of Incognito. It's not clear what this particular
25 quotes suggests because it says " [REDACTED] 01:23:16

1 [REDACTED] . "

2 So I'm not -- not exactly sure what [REDACTED]
3 is.

4 BY MR. REBLITZ-RICHARDSON:

5 Q. Okay. Do you -- where this refers to 01:23:35

6 "[REDACTED]"
7 "[REDACTED]," do you have -- can you identify
8 any product that that's referring to other than
9 Chrome Incognito?

10 MS. OLSON: Objection to the form. 01:23:50

11 THE WITNESS: You know, the -- the
12 previous page says, "In Chrome, Search, YouTube and
13 Maps." You know, as I said, these are not -- this
14 is not how you evaluate a brand study by looking at
15 some -- some representation that doesn't give you 01:24:15
16 all the information about exactly what it refers to.

17 When I cited that -- this -- this
18 document, I cited it for -- again, a particular
19 anecdote, where, if I recall correctly, it looked at
20 what users value most in terms of privacy. And it 01:24:40
21 was privacy from other users and stuff like that.
22 That's what I used this for. And I treat it as an
23 anecdote because I have no idea whether this study
24 was run with any adherence to best practices. I
25 don't know exactly how and who and when this study 01:24:58

1 was run.

2 And so, I'm careful not to draw
3 conclusions from this data. It's certainly not
4 clear what this relates to. When -- when you just
5 look at the presentation. It's possible that the 01:25:15
6 speaker that presented this gave context to the
7 speakers when they spoke, but the context is missing
8 from these slides.

9 BY MR. REBLITZ-RICHARDSON:

10 Q. Based on your review of these slides, in 01:25:26
11 April 2019, was Google considering rebranding
12 Incognito so that Google would confuse users less?

13 MS. OLSON: Objection to the form.

14 THE WITNESS: Yeah, I'm not sure. I --
15 you know, someone at Google paid someone or 01:25:43
16 conducted research that -- that addressed the --
17 seem to address the question based on the title of
18 this of whether they should amend or change or -- or
19 revitalize the brand- -- branding of Incognito. Any
20 other kind of conclusions are -- are -- will -- will 01:26:03
21 be speculations from this document.

22 BY MR. REBLITZ-RICHARDSON:

23 Q. Let's go to the next page. Do you see on
24 the next page where this states, " [REDACTED]
25 [REDACTED] "? 01:26:17

1 A. Yeah.

2 Q. Do you understand the reference there to
3 the name to be the name Incognito?

4 MS. OLSON: Objection to the form.

5 THE WITNESS: Again, I -- you know, as -- 01:26:28
6 as a -- as a speculation, I would tend to agree.

7 But it's hard to know for sure. But let me just say
8 that -- that some -- there's something interesting
9 that I think is inherent in -- in all the questions
10 you've asked so far. 01:26:42

11 Suppose there are ten percent of the users
12 that Google thinks are misunderstanding Incognito.
13 That could be sufficient for them to consider to do
14 something about it. And whether they do or do
15 not -- you know, and then they would issue a study. 01:26:58
16 And whether they do or do not, often is a decision
17 of whether the investment and the -- the result in
18 confusion from rebranding is going to be worth it.

19 So the fact that they say, this could
20 reduce confusion, doesn't tell us the extent of 01:27:13
21 confusion. It -- it just -- it just says, you know,
22 there exists customers that are confused or that
23 misunderstand, and as I pointed out in my
24 affirmative study, I also find a small proportion
25 of -- of responders that seem to not understand some 01:27:31

1 of the aspects of using Incognito that I tested.

2 So, you know, this is not inconsistent,
3 but it's certainly not -- you know, you cannot
4 assume that this tells you something about the
5 magnitude of the issue. 01:27:52

6 BY MR. REBLITZ-RICHARDSON:

7 Q. Professor Amir, do you recall my question?

8 A. Yes.

9 Q. What was my question?

10 A. So would I -- would it be reasonable to 01:27:58
11 assume that this refers to Incognito.

12 Q. Well, this states, " [REDACTED]
13 [REDACTED]"

14 Do you read that to be referring to the
15 Incognito name? 01:28:15

16 A. Sorry --

17 MS. OLSON: Objection. Asked and
18 answered.

19 THE WITNESS: I'm also -- I think you --
20 you are confusing the question, " [REDACTED] 01:28:21

21 [REDACTED]. You said " [REDACTED]
22 [REDACTED]"

23 BY MR. REBLITZ-RICHARDSON:

24 Q. Oh, I apologize.

25 A. Yeah. So -- 01:28:26

1 Q. Let me do my question --

2 (Simultaneous speaking.)

3 (Interruption in audio/video.)

4 A. And I said -- I said -- I -- I answered

5 this, and I said, if you want me to speculate, 01:28:30
6 because that's the only thing I can do from this
7 document, I would speculate that it refers to
8 incognito, but I don't know exactly.

9 Q. And where this states " [REDACTED]

10 [REDACTED], " do you have any 01:28:47
11 reason to believe that the reference there to the
12 "logo" is anything other than the incognito logo?

13 MS. OLSON: Objection to the form.

14 THE WITNESS: Again, speaking kind of as a
15 lay reader of this and speculating, I have no reason 01:29:02
16 to think it's talking about something else.

17 BY MR. REBLITZ-RICHARDSON:

18 Q. Do you agree that the incognito logo
19 conveys secrecy?

20 A. I would agree that that is an empirical 01:29:11
21 question which I did not test.

22 Q. So you don't know, one way or another,

23 [REDACTED] ?

24 A. I do not. That is an empirical question.
25 And I've done studies like this for companies, but I 01:29:28

1 didn't do a study like this in this case.

2 Q. And let's go two more pages to '258.

3 And do you see where it says " [REDACTED]

4 [REDACTED] ?

5 A. Yes. 01:29:48

6 Q. What do you understand that to mean?

7 MS. OLSON: Objection to the form.

8 THE WITNESS: It says "Goals" in a very 01:30:01
9 small font, so I take this slide to reflect the
10 goals of some effort or activity or whatever.

11 It says " [REDACTED] , " and then it 01:30:19
12 goes, " [REDACTED] . "

13 I don't -- you know, it's not clear here
14 what "it" is, but that's what the slide says.

15 This seemed to be the goal for whatever 01:30:19
16 they were doing.

17 BY MR. REBLITZ-RICHARDSON:

18 Q. And where it says, " [REDACTED]

19 [REDACTED]
20 [REDACTED], " do you have any reason to believe that the 01:30:28
21 reference there to "it" is anything other than
22 incognito?

23 MS. OLSON: Objection to the form.

24 THE WITNESS: Again, you know, it's 01:30:40
25 speculation. I have no reason to believe it's not.

1 BY MR. REBLITZ-RICHARDSON:

2 Q. For your likelihood of use survey, did you
3 consider any of the changes to the incognito
4 branding described in this document?

5 A. I did not.

01:30:52

6 Q. Going back to Exhibit 2, in paragraph 58
7 you cite a July 2019 Wired article.

8 Do you recall that?

9 A. Yeah, give me a second to go there.

10 Paragraph 52?

01:31:23

11 Q. 58.

12 A. 58, sorry. Sorry about that.

13 Q. It's okay.

14 A. 58, yes.

15 Q. You see you cite a July 2019 Wired
16 article; correct?

01:31:32

17 A. Yes.

18 Q. In your three studies, did you ask whether
19 anyone had read that article?

20 A. I did not.

01:31:42

21 Q. Have you conducted any empirical study to
22 evaluate the extent to which any class members
23 reviewed that July 2019 Wired article?

24 A. I do not. But I also don't think that it
25 would matter for the goals of my study.

01:31:56

1 MR. REBLITZ-RICHARDSON: I'd like to mark
2 what will be Exhibit 7, what is Tab 16, which is a
3 copy of Dr. Strombom's report.

4 (Amir Deposition Exhibit 7 was marked
5 electronically.) 01:32:06

6 BY MR. REBLITZ-RICHARDSON:

7 Q. Professor Amir, are you -- are you
8 familiar with someone named Dr. Strombom?

9 A. I'm not familiar with someone named
10 Dr. Strombom. But I still don't have the exhibit. 01:32:37
11 This is not one that I cited.

12 Q. Okay.

13 A. You can't blame me for this big long
14 document.

15 Q. Well, I -- I'm only going to ask you about 01:32:44
16 two very discrete portions.

17 A. Okay. I have it, Exhibit 7.

18 Q. Do you see on the front here it states
19 "EXPERT REPORT OF BRUCE STROMBOM"? [As read]

20 A. Yes. 01:32:54

21 Q. This isn't something you've seen before;
22 right?

23 A. Never seen this before.

24 Q. Okay. I want to go all the way to
25 Exhibit 1 of this report, which lists a bunch of 01:33:02

1 articles.

2 A. Exhibit 1, I'm there.

3 Q. Okay.

4 MS. OLSON: Sorry, I'm not there yet.

5 MR. REBLITZ-RICHARDSON: No problem. 01:33:15

6 MS. OLSON: Okay.

7 BY MR. REBLITZ-RICHARDSON:

8 Q. And do you see that Exhibit 1 in this
9 Exhibit 7 to Dr. Strombom's report lists various
10 articles? 01:33:29

11 A. Yes.

12 Q. Did you conduct any survey concerning any
13 of the articles identified by Dr. Strombom in this
14 Exhibit 1?

15 A. Well, first, I don't know because I'm 01:33:42
16 seeing it for the first time. So do you want me to
17 read them carefully and seen if I've -- anything
18 might be included?

19 Q. Sure.

20 A. Give me a second. 01:33:52

21 Q. I mean, I can ask at a higher level. Did
22 you conduct any survey regarding any articles at
23 all?

24 A. If you don't include the Google text that
25 I exposed to responders in my second study, then the 01:34:02

1 answer is no.

2 Q. Okay. Well, why don't you go --

3 A. But let me just -- I'll point out that I
4 do have the question that I conducted sensitivity
5 analysis around with awareness of lawsuits related 01:34:18
6 to incognito mode, and then I have an open-ended
7 response. You can see what people are actually --
8 if they mention something specific. And I do
9 conduct sensitivity analysis with respect to that.

10 And so to the extent that -- I don't know 01:34:39
11 these articles. To the extent that they mention
12 this lawsuit or related, then I do have some way to
13 capture that.

14 Q. Okay. But if you go through the articles
15 listed in this Exhibit 1 to Dr. Strombom's report, 01:34:49
16 none of your surveys included any questions tied
17 specifically to any of these articles; is that fair?

18 A. Yes, I -- so I have -- I have not seen
19 this report before. I'll just say to the extent
20 that any of these articles are talking about 01:35:16
21 perceptions or expectations from Google's and
22 others' private browsing splash screen or their
23 understanding of Google policies, then I did have
24 questions that are specifically about that.

25 I don't know what these articles are 01:35:32

1 about. But if they -- if they mention, if they
2 discuss some of the topics that I asked directly
3 about, then I do have.

4 But I did not design my study questions
5 with respect to any of these articles directly. 01:35:44

6 Q. Right.

7 And did you design any of your surveys to
8 obtain information regarding whether any class
9 members had seen any of these specific articles?

10 A. I think that -- that my previous answer 01:35:59
11 about awareness of lawsuits and issues with
12 incognito is the only one that potentially addresses
13 that.

14 Q. So unless any of these articles are
15 specifically referred to in response to your 01:36:11
16 question about awareness of the lawsuit, you haven't
17 separately asked any questions about whether or not
18 any class members have seen these articles; is that
19 fair?

20 A. I -- 01:36:28

21 MS. OLSON: Objection to the form.

22 THE WITNESS: So I -- there's -- there's
23 several components there. Just -- just to sharpen,
24 yes, I have not asked direct questions about any of
25 these documents. 01:36:36

1 If these documents refer to a lawsuit
2 or -- or lawsuits, then -- then they're -- then they
3 might be captured by that question. But I don't
4 have any specific question about any of these
5 specific articles.

01:36:52

6 BY MR. REBLITZ-RICHARDSON:

7 Q. And what about Exhibit 2 to this report,
8 which is something that references "Cookie
9 Disclosures," do you have any specific questions in
10 your surveys about those specific cookie
11 disclosures?

01:37:05

12 MS. OLSON: And I'm just going to
13 interpose an objection to this exhibit on the basis
14 that Dr. Amir has not seen this before.

15 THE WITNESS: Yeah, I -- I've -- I've not
16 seen this before.

01:37:17

17 BY MR. REBLITZ-RICHARDSON:

18 Q. Professor Amir, have you seen Exhibit 2 to
19 Dr. Strombom's report before?

20 A. No.

01:37:26

21 Q. No. Okay.

22 Did you, as part of your surveys, ask any
23 questions specifically about any of the cookie
24 disclosures included in this Exhibit 2 to
25 Dr. Strombom's report?

01:37:38

1 A. So -- let me look at this. It's a long
2 exhibit. Hold on.

3 The -- the -- so I have -- I have one
4 question directly about understanding about cookies.

5 And I have -- I expose respondents in different 01:37:59
6 conditions to various Google policies.

7 So to the extent that this exhibit does
8 not talk about the Google policies, then I have not
9 directly asked about any of these.

10 Q. Okay. We can set that aside. 01:38:16

11 MR. REBLITZ-RICHARDSON: Let's go ahead
12 and mark as Exhibit 8 what is Tab 17.

13 (Amir Deposition Exhibit 8 was marked
14 electronically.)

15 THE WITNESS: Got it. 01:38:57

16 BY MR. REBLITZ-RICHARDSON:

17 Q. Do you have in front of you Exhibit 8,
18 which is a copy of the Court's Motion to Dismiss
19 order?

20 A. Yes. 01:39:05

21 Q. And is this the order you referred to
22 previously that you had reviewed in connection with
23 your decisions on what to highlight for your second
24 survey?

25 A. Yes. 01:39:16

1 Q. So this is a -- this is an order you're
2 familiar with; right? You read this?

3 A. I've read this.

4 Q. And you relied upon this order; right?

5 MS. OLSON: Objection to the form. 01:39:27

6 THE WITNESS: I've relied about -- you
7 know, I've relied on parts of this.

8 BY MR. REBLITZ-RICHARDSON:

9 Q. Okay. Fair.

10 It's just -- it's -- you listed it in your 01:39:34
11 materials relied upon; correct?

12 A. Yes. And then specifically when I
13 described it, I described page 17 of this. Now that
14 I scrolled, this is what I relied upon.

15 Q. Okay. Going to page 15 -- 01:39:49

16 MR. REBLITZ-RICHARDSON: And maybe we can
17 just pull this up so I can see it as well.

18 Dina, do you have a copy of Exhibit 8,
19 just going to page 15?

20 BY MR. REBLITZ-RICHARDSON: 01:40:19

21 Q. And starting at line 14, Professor Amir,
22 do you see where this states, "Google cannot
23 demonstrate that Plaintiffs expressly consented
24 because Google did not notify users that it would be
25 engaging in the alleged data collection while 01:40:33

1 Plaintiffs were in private browsing mode"?

2 A. Yes, I see this line.

3 Q. Okay. So that's a -- that's a line from
4 the Court's order; right?

5 A. Yes.

01:40:51

6 Q. And do you agree that Google did not
7 notify users that it would be engaging in the
8 alleged data collection while they were in private
9 browsing mode?

10 MS. OLSON: Objection to the form and 01:40:59
11 outside the scope. Calls for a legal conclusion.

12 THE WITNESS: Yeah, so if -- if this came
13 up, I would ask my wife. She knows about law a lot
14 more than -- than I do. I -- I -- I'm not a -- I'm
15 not a lawyer. This seems to be a legal question. I 01:41:14
16 don't exactly know what you mean by "consent," and
17 I'm certainly not qualified to judge this.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. Now, I was only asking about the part of
20 the sentence that states, "Google did not notify 01:41:27
21 users that it would be engaging in the alleged data
22 collection while Plaintiffs were in private browsing
23 mode."

24 Do you see that part?

25 A. Yes. 01:41:39

1 Q. And are you intending to offer any opinion
2 that's contrary to the Court's statement there that
3 "Google did not notify users that it would be
4 engaging in the alleged data collection while
5 Plaintiffs were in private browsing mode"? 01:41:51

6 MS. OLSON: Objection to the form.

7 THE WITNESS: Yeah, so -- so I think
8 that -- I don't know what Google did or didn't do,
9 but -- but I measured users' perceptions.

10 And to the extent that users' perceptions 01:42:08
11 are useful as representations of what users
12 understood and knew, then a sizable portion of
13 the -- of the users do understand that Google will
14 receive data such as mentioned here.

15 And so I didn't drill down to track how 01:42:27
16 they understand this or why they understand this. I
17 know they do.

18 BY MR. REBLITZ-RICHARDSON:

19 Q. And then just going back to your survey
20 design, we talked earlier about your use of the 01:42:39
21 word "receiving"; right?

22 A. Yes.

23 Q. And you see here that the Court's
24 discussing "collection"; right?

25 A. Yes. 01:42:50

1 Q. Okay. And so in terms of designing your
2 survey, after this order, you determined to use the
3 term "receiving" instead of "collecting"; right?
4 A. Yes.

5 MS. OLSON: Objection to the form. 01:43:02

6 BY MR. REBLITZ-RICHARDSON:

7 Q. Going on to line 24 here, do you see where
8 it states, "Google's Privacy Policy does not
9 disclose Google's alleged data collection while
10 Plaintiffs were in private browsing"? 01:43:19

11 A. I see that sentence.

12 Q. Are you offering -- are you intending to
13 offer any opinion inconsistent with that statement
14 there?

15 MS. OLSON: Objection to the form. 01:43:33

16 THE WITNESS: As I said before, my
17 opinion, based on my second survey, is that people
18 who have read and attended to the privacy policy
19 report understanding that Google does receive this
20 data. So that's -- you know, that's the extent of
21 the opinion that I can -- that I can provide on this
22 question. 01:43:48

23 BY MR. REBLITZ-RICHARDSON:

24 Q. Do you have a single group or survey
25 anywhere that assesses only the Google privacy 01:44:02

1 policy?

2 A. Let me -- let me just look at my -- my
3 report, because I think that it's never going to be
4 only the privacy policy because you have -- you --
5 you are exposed to the incognito splash screen when 01:44:21
6 you open it, and so --

7 Q. Right.

8 But your -- your testimony just said the
9 people who read, attended to the privacy policy,
10 report understanding that Google receives this data. 01:44:33

11 And I just want to be clear, you didn't
12 test anyone based on just reading the Google privacy
13 policy; right?

14 A. That's right. The people in that
15 condition saw the incognito splash screen, the Learn 01:44:49
16 More, the Google privacy policy, and the Chrome
17 privacy policy. So those people who were exposed to
18 this report understanding -- or -- or, sorry.

19 A sizable majority of them re- -- re- --
20 report understanding that Google will receive the 01:45:02
21 three data types that I asked about.

22 Q. And are you offering the opinion that
23 Google's privacy policy does disclose Google's
24 alleged data collection while users are in private
25 browsing mode? 01:45:19

1 MS. OLSON: Objection to the form.

2 THE WITNESS: Yeah, I only offer the
3 opinion that I just stated.

4 BY MR. REBLITZ-RICHARDSON:

5 Q. Okay. Page 17, line 16. 01:45:26

6 Do you -- do you see where this states,
7 "the Incognito Splash Screen omits Google from the
8 list of entities that can view a user's activity in
9 private browsing mode"?

10 Do you see that? 01:45:47

11 A. Yes, I do.

12 Q. Do you agree with that?

13 A. As evident from my third study, I have the
14 original language that doesn't include "Google."
15 And then I have the amended or adjusted language 01:46:03
16 which does include "Google." So clearly I agree
17 that the original language doesn't explicitly state
18 "Google."

19 Q. I'm not asking about explicitly states. I
20 asking, do you agree that the incognito screens -- 01:46:17
21 the splash screen omits Google from the list of
22 entities that can view a user's activity in private
23 browsing mode?

24 MS. OLSON: Objection to the form. Asked
25 and answered. 01:46:29

1 THE WITNESS: Yeah, I don't -- I don't
2 actually know what you mean by "omits." Omits
3 suggest some intentionality. And I don't know
4 anything that that's -- I don't have evidence that
5 that's the case or not. So I'm not going to opine 01:46:40
6 on whether "omits" is the right description.

7 BY MR. REBLITZ-RICHARDSON:

8 Q. You can see the incognito screen there on
9 page 17; right?

10 A. Yes. 01:46:50

11 Q. Does it say "Google"?

12 A. As I -- as I already testified, the
13 original screen I used does not say "Google" in the
14 list of parties that collect data. But it doesn't
15 also say "Adobe Analytics," and it also doesn't say 01:47:03
16 "Amazon" or "Facebook." It doesn't say any.

17 Q. Does it omit Google?

18 MS. OLSON: Objection. Asked and
19 answered.

20 THE WITNESS: Yeah, let me give you my lay 01:47:15
21 understanding of this. If you gave specific
22 entities but did not include Google, then you could
23 maybe argue that you omit from a list that you
24 provide. But if you don't provide the list, I don't
25 know if you omitted it. 01:47:29

1 BY MR. REBLITZ-RICHARDSON:

2 Q. What do you understand the word "omit" to
3 mean?

4 A. Omit is that you are -- you are -- you had
5 a decision of not to include a certain term. So the 01:47:38
6 term -- you omitted that term. That's how I
7 understand it.

8 Q. And I don't understand how you can look at
9 this and just -- and -- and say anything other than
10 this omits Google. It doesn't include Google; 01:48:03
11 right?

12 MS. OLSON: Objection. Asked and answered
13 three times now.

14 THE WITNESS: Yeah, as I testified, it's
15 clear it does not include Google, but it doesn't 01:48:11
16 include any of the other entities that usually
17 collect data.

18 So it's not -- it -- it doesn't appear as
19 if Google was intentionally omitted while including
20 all the other like data collectors. It's just this 01:48:23
21 entire set of entities does not appear on the
22 original screen. But that's why in my alternative
23 language study I added them explicitly.

24 BY MR. REBLITZ-RICHARDSON:

25 Q. But you understand this incognito screen, 01:48:40

1 this comes from Google; right?

2 A. Of course.

3 Q. Doesn't that make a difference in terms of
4 whether or not Google is included here?

5 MS. OLSON: Objection to the form. 01:48:50

6 THE WITNESS: No.

7 BY MR. REBLITZ-RICHARDSON:

8 Q. Okay. Let's go back to your rebuttal
9 report, paragraph 5.

10 MR. REBLITZ-RICHARDSON: You can take that 01:49:05
11 down.

12 THE WITNESS: Paragraph --

13 BY MR. REBLITZ-RICHARDSON:

14 Q. Paragraph 5, do you see where you discuss
15 a "readability calculator"? 01:49:19

16 A. Yes.

17 Q. In assessing Professor Schneier's
18 opinions, did you identify any errors in terms of
19 the numbers generated by Professor Schneier in
20 connection with that readability calculator? 01:49:35

21 A. I don't believe that I wrote that there
22 are errors in the actual application of the
23 calculator. I opined on the use of this calculator
24 to begin with and of providing pieces of,
25 quote/unquote, "numerical evidence" out of context; 01:49:54

1 and, therefore, drawing an overarching conclusion
2 that seems to be out of -- you know, out of place at
3 the very least.

4 Q. I'm just asking whether or not you
5 identified any errors in terms on how he ran the 01:50:13
6 documents using the readability character --
7 calculator?

8 A. It's hard to get errors.

9 MS. OLSON: Objection. Asked and 01:50:23
10 answered.

11 THE WITNESS: Yeah, it's hard to get
12 errors. You upload a document, and you get a
13 number.

14 BY MR. REBLITZ-RICHARDSON:

15 Q. Okay. Let's look at page 23. You've got 01:50:27
16 a -- got a "Table 1" there.

17 Do you see that?

18 A. Let me get there. Page 20- -- 23? Yes,
19 I'm in -- I'm there.

20 Q. And under "Google Policies," you have 01:50:52
21 "Google Terms of Service," "Google Privacy Policy,"
22 and "Google Chrome Privacy Notice."

23 Do you see that?

24 A. Yes.

25 Q. What are the dates of those three 01:51:00

1 Google pri- -- Google policies?

2 A. Oh, wait. I don't remember it by heart.

3 Q. Are the numbers in this Table 1, the same
4 numbers reported by Professor Schneier?

5 A. I don't remember. We can put Professor 01:51:14
6 Schneier's reports. You know, he used, I think, one
7 or two of these, and I tested six. So some of them
8 might be similar, if we -- if -- you know, if we
9 used the same one.

10 Q. Okay. Who selected the additional 01:51:31
11 policies and articles included in this Table 1?

12 A. I -- I -- in discussion with my support
13 group at Analysis Group, we picked various other
14 types of documents.

15 To put these results in contexts, because 01:51:49
16 it -- it's very obvious that if you take these
17 results just as a number without context, you're
18 easily misleading the audience. It's very easy to
19 understand the wrong thing.

20 If you're going to assess documents with 01:52:06
21 this methodology, which I actually registered an
22 objection for because these document -- this --
23 these algorithms do very simplistic things, then you
24 need to assess them in context. And I picked just
25 as -- you know, as anecdotal evidence other 01:52:28

1 documents as context.

2 Q. Would users go to any of these other
3 documents to try and figure out whether or not
4 Google's collecting their private browsing
5 information?

01:52:44

6 MS. OLSON: Objection. Calls for
7 speculation.

8 THE WITNESS: Yeah, and that's -- and
9 that's be- -- that's totally not the point. I'm
10 sure they will not go to -- to -- to some of
11 Mr. Schneier's documents, nor to your company's
12 privacy policy.

13 But -- but the point is, if you're going
14 to strow [verbatim] -- throw a number out there, you
15 have to bring -- to give context.

01:53:14

16 I'll give you a very simple example for
17 context dependence. If I tell you that something
18 costs a hundred dollars, is that a lot, or is that
19 cheap? You don't know.

20 In absolute, assessing any number, and
21 price is a number you are familiar with, it's going
22 to be extremely hard, if not possible.

23 So the way to assess these kind of
24 algorithms that throw numbers on some scale you
25 don't understand is to put them in context.

01:53:38

1 And I picked some examples of other
2 documents, some of which, for example, Mr. Schneier
3 should be very familiar with, like his papers, to
4 just put them in context and say, Oh, this is --
5 this got 42; therefore, it must be very bad. 01:53:54

6 Really? Is that very bad compared to what?

7 And I provided here the compared to what
8 to show you a little bit as to kind of how Mr. --
9 Professor Schneier took things out of context to try
10 to make a point. 01:54:11

11 BY MR. REBLITZ-RICHARDSON:

12 Q. Right.

13 But you didn't look at other technology
14 companies' privacy policies, terms of service, or
15 privacy notices; right? 01:54:19

16 A. I looked at --

17 MS. OLSON: Objection to the form.

18 THE WITNESS: Yeah, I looked at other
19 companies' privacy policies. And, you know, they're
20 listed here. And that gives you a pretty good 01:54:31
21 context to show that the Google policies that
22 Mr. Schneier tests are really not out of line with,
23 you know, a lot of the things out there. I didn't
24 test, but it's very easy to test whether, you know,
25 Facebook is going to fare better, and I -- my guess 01:54:50

1 is it's probably not.

2 BY MR. REBLITZ-RICHARDSON:

3 Q. Any of the comparisons you included here,
4 are those companies offering browsers with or
5 without private browsing mode? 01:55:02

6 A. I hope not.

7 Q. I just -- you know, you're throwing in
8 here law firm disclosures.

9 Is it your understanding that -- that
10 users are going to law firm disclosures to try and 01:55:14
11 figure out how private browsing mode works?

12 MS. OLSON: Objection. Asked and
13 answered.

14 THE WITNESS: And -- and -- and I -- I
15 think -- you know that I've never argued they do. I 01:55:23
16 wanted to show you that these documents, when judged
17 by these super simplistic algorithms, produce
18 numbers, but those numbers are meaningless unless
19 you put them on a scale.

20 And I picked documents familiar to many of 01:55:43
21 the people in- -- involved in this legal action who
22 I directed my reports to to show you what that scale
23 means.

24 BY MR. REBLITZ-RICHARDSON:

25 Q. Did you read any of those other materials 01:55:59

1 here, either the law firm policies or the other
2 entities or Schneier's articles?

3 A. I did not read most of these. I read -- I
4 may have read one of -- or two of these Schneier
5 articles, if he cites them at the time, but 01:56:12
6 certainly did not read the law firms' privacy
7 policies.

8 But that's not the point because the point
9 is Mr. Schneier did not actually pro- -- create a
10 test based on actual user reading. Mr. Schneier 01:56:27
11 used an algorithm that produces an arbitrary number,
12 and I wanted to -- to allow the readers of this
13 report to understand what that number is by putting
14 it in context.

15 Q. Professor, I know it's been a long day. 01:56:43
16 I'm just asking whether you read these.

17 A. And I responded.

18 Q. Did you read Professor Schneier's
19 articles, the three you listed here?

20 A. And I said -- 01:56:59
21 MS. OLSON: Objection. Asked and
22 answered.

23 THE WITNESS: Yeah. And I said that to
24 the extent -- I don't remember all of his. He has
25 lots of articles. I read some of those mentioned in 01:57:04

1 the report. I don't know if those are mentioned in
2 the report. I don't remember.

3 BY MR. REBLITZ-RICHARDSON:

4 Q. But sitting here today, you can't say
5 whether you've read any of the three articles that 01:57:12
6 you list there; is that fair?

7 A. I said I just I don't remember.

8 Q. Okay. In connection with your third
9 rebuttal opinion -- let's just go to your third
10 rebuttal opinion, the Executive Summary. 01:57:26

11 A. I'm there.

12 Q. This is Google's offering of incognito
13 mode; right?

14 A. Yes.

15 Q. Did you talk to anyone at Google about why 01:57:40
16 Google offers incognito mode?

17 A. With the risk of repeating myself, I did
18 not talk to any Google employee in the context of
19 making these reports.

20 Q. Did you review the deposition testimony by 01:57:56
21 Brian Rakowski?

22 A. I don't remember. I did -- I mean, if
23 it's cited in this report, I did.

24 Q. Do you know who Brian Rakowski is?

25 A. I don't remember. 01:58:12

1 Q. Are you aware Google's counsel has
2 referred to him as the father of incognito mode?

3 A. No.

4 Q. Did you bother to review any of the
5 documents marked as exhibits during Mr. Rakowski's 01:58:25
6 deposition?

7 MS. OLSON: Objection to the form.

8 THE WITNESS: Again, I -- I reviewed the
9 documents I cite in this report.

10 BY MR. REBLITZ-RICHARDSON: 01:58:39

11 Q. Okay. Let's go to your last rebuttal
12 opinion, which concerns Mr. Keegan's --

13 (Interruption in audio/video.)

14 THE COURT REPORTER: Excuse me. Could you
15 repeat that. I can't hear you very well. 01:58:48

16 MR. REBLITZ-RICHARDSON: Sorry.

17 BY MR. REBLITZ-RICHARDSON:

18 Q. Let's go to page 9 of Amir Exhibit 2,
19 which includes your "Amir Rebuttal Opinion 11."

20 Are you there? 01:59:02

21 A. Yes, I'm there.

22 Q. Okay. And so looking at paragraph 18, you
23 state "For example, while my studies report that
24 just 42% of Chrome users have used Incognito mode in
25 the past six months, his study reports an estimate 01:59:11

1 of 64% recall using Incognito mode."

2 Do you see that?

3 A. Yes.

4 Q. So the 42 percent that you have is based
5 on the past six months; right? 01:59:24

6 A. Yes, on recall for the past six months.

7 Q. And you understand that Mr. Keegan asked
8 about incognito usage over the previous past five
9 years; correct?

10 A. I certainly am aware that he did that. 01:59:38

11 Q. Okay. And other than the 42 percent from
12 your studies and the 64 percent from Mr. Keegan's
13 survey, have you identified any other evidence
14 regarding the frequency of incognito use by Chrome
15 users in terms of the percentage of Chrome users who
16 use incognito mode? 01:59:55

17 MS. OLSON: Objection to the form.

18 THE WITNESS: Yeah. So as I stated
19 earlier, none of this -- none of the empirical
20 studies in this case actually address that point
21 directly. 02:00:10

22 What we do know from some Google documents
23 is that only [REDACTED], on
24 average, comes from incognito usage.

25 BY MR. REBLITZ-RICHARDSON:

02:00:22

1 Q. Right.

2 And my question is: Have you seen any
3 Google documents that deal with incognito usage by
4 Chrome users as a percentage of Chrome users?

5 A. I don't think I have.

02:00:32

6 Q. Right.

7 So you've got the 42 percent, Keegan's got
8 the 64 percent, and then you're not aware of any
9 Google documents addressing this; is that right?

10 MS. OLSON: Objection to the form.

02:00:46

11 THE WITNESS: I think that's right. But
12 note that there are other estimates that arise from
13 Keegan's study that you can directly compare to
14 market share where he finds exaggerated results,
15 which are very consistent with a recall bias.

02:01:02

16 BY MR. REBLITZ-RICHARDSON:

17 Q. So, let's look at Exhibit 9, which --

18 MR. REBLITZ-RICHARDSON: Dina, it's Tab
19 18, which is the document GOOG-BRWN-00406075.

20 (Amir Deposition Exhibit 9 was marked
21 electronically.)

02:01:23

22 BY MR. REBLITZ-RICHARDSON:

23 Q. And, Professor, could you tell me when you
24 have Exhibit 9 in front of you?

25 A. I got it.

02:01:28

1 Q. All right.

2 So I'm showing you a document that was
3 produced by Google.

4 Is this a document you've seen before?

5 You can take a moment to take a look. 02:01:48

6 A. (Witness reviews.)

7 Yeah. I don't think I've seen this
8 document.

9 Q. It's an internal Google e-mail; right?

10 You see the google.com e-mails at the top? 02:02:12

11 A. Yeah.

12 Q. And on the first page, do you see where
13 this states, "Incognito mode is used by [REDACTED] of
14 Chrome users, and [REDACTED] use it at least once per
15 week"? 02:02:30

16 A. I do see this.

17 Q. Now, that [REDACTED], that's -- that's
18 higher than the 64 percent reported in Mr. Keegan's
19 report; right?

20 MS. OLSON: And I just object to this 02:02:38
21 document. Mr. -- or Professor Amir testified he
22 hasn't seen it before.

23 But you can answer the question.

24 THE WITNESS: Yeah, so this document is
25 from 2021, and it does say what you say it says. 02:02:48

1 BY MR. REBLITZ-RICHARDSON:

2 Q. And in col- -- connection with your
3 rebuttal report, did you consider this document?

4 A. As I testified not seeing this document
5 before, the answer is "no." 02:03:05

6 Q. And in connection with your rebuttal
7 report, did anyone inform you that Google had
8 conducted its own study finding that incognito mode
9 is used by [REDACTED] of Chrome users?

10 MS. OLSON: Objection to the form. 02:03:21

11 THE WITNESS: Yeah, so -- so the answer's
12 "no," otherwise, I would have looked at this
13 document. I should say, though, that when you say
14 "incognito mode is used by [REDACTED] of Chrome
15 users," what does that mean? Once in their 02:03:37
16 lifetime? Ever? What do you make of this -- so --
17 so the danger with -- with citing an e-mail that is
18 based on some unknown, quote/unquote, "study
19 methodology" is that you don't really know what this
20 data means. 02:03:58

21 BY MR. REBLITZ-RICHARDSON:

22 Q. And you didn't do any research to figure
23 out what this meant because you didn't know about
24 it; right?

25 A. That's right. And -- 02:04:04

1 Q. Can you go --

2 A. -- again, you know, you could see that
3 there's some study that was done. Very hard to --
4 to conclude whether it was done well, and whether it
5 would be up to standard for legal purposes. So you 02:04:18
6 need to take whatever is found here with a grain of
7 salt.

8 Q. I'd like to look at Amir Exhibit 3, which
9 is your supplemental report.

10 A. Okay. Hold on.

11 I have that.

12 Q. All right.

13 Let's go to paragraph 3.

14 A. Paragraph 3.

15 Q. In paragraph 3, do you see where you 02:04:47
16 describe Mr. Keegan's approach as a "non-standard
17 additive approach"?

18 A. Yeah.

19 Q. Okay. Are you aware of any other surveys
20 using an additive approach? 02:05:03

21 A. Let me -- let -- let me cut to the chase.

22 This additive methodology, as I explained,
23 is so flawed that I've never in my life seen anyone
24 use methodology like that and pass any level of
25 scrutiny, because the answer -- the total answer for 02:05:25

1 the additive number is going to directly depend on
2 the number of questions you ask.

3 So if you want to get a high number, ask
4 more questions. If you want to get a low number,
5 ask few questions. this is if most leading design I 02:05:37
6 have seen in a long while, and I've seen a lot of
7 studies. This is bizarre.

8 Q. Having seen a lot of studies, have you
9 ever seen a study using an additive approach?

10 A. What do you mean -- 02:05:56

11 MS. OLSON: Objection. Asked and
12 answered.

13 THE WITNESS: Yeah. What do you mean when
14 you're saying an "additive approach," this approach?

15 BY MR. REBLITZ-RICHARDSON: 02:05:59

16 Q. An addi- -- you described this as an
17 additive approach; correct?

18 A. I described it as many things. One of
19 them was additive.

20 Q. Okay. Have you ever seen a study using an 02:06:08
21 additive approach?

22 A. I've seen studies that's used additive
23 approach when used properly. But they didn't --
24 the -- the goal was very different than Keegan's
25 study. 02:06:22

1 Q. I understand that you have criticisms of
2 Mr. Keegan's studies --

3 A. This is not --

4 Q. -- were not --

5 (Simultaneous speaking.) 02:06:23

6 (Interruption in audio/video.)

7 THE COURT REPORTER: Excuse me. One --
8 one person at a time, please.

9 BY MR. REBLITZ-RICHARDSON:

10 Q. You can't inter- -- interrupt me. 02:06:27

11 A. Sorry.

12 Q. I understand that you have criticisms of
13 Mr. Keegan's rebuttal survey. My question is
14 focusing on other surveys you've seen in your work
15 and whether or not you've seen other surveys using 02:06:39
16 an additive approach. I think that's a question I'm
17 entitled to get a clear answer to.

18 MS. OLSON: He was trying to answer that
19 question, and you interrupted him.

20 THE WITNESS: Let -- let me give -- let 02:06:51
21 me -- let me give a clear answer. The term "an
22 additive approach" describes many different
23 methodologies.

24 Sometimes additive approaches are
25 appropriate. That is, when you look at different 02:07:03

1 sub-samples and you say, What's the proportion in
2 this sub-sample, What's the proportion in this
3 sub-sample, where they're mutually exclusive. And
4 these sub-samples spanned a population, and you add
5 them up to say, This is a proportion in the 02:07:18
6 population weighted by the size of the segments.
7 That's an additive approach that can work.

8 When you're trying to estimate the -- some
9 number, as Mr. Keegan tried to estimate, and you
10 repeatedly ask questions of the same -- as -- 02:07:35
11 declining populations that you threw out the rest,
12 you are so biasing the result that no one would
13 accept this as -- as a -- as a result. I've never
14 ever seen this additive approach in a serious study.

15 I -- you know, I -- I teach -- I teach 02:08:00
16 market research. I've taught it for years. If an
17 undergraduate student submitted -- would have
18 submitted this, they would have gotten a big 0 on
19 their assignment.

20 BY MR. REBLITZ-RICHARDSON: 02:08:12

21 Q. You've taught marketing research, yeah?

22 A. I teach. I still do. I teach an applied
23 market re- -- marketing -- applied marketing
24 research course.

25 Q. Have you ever heard of a funnel format for 02:08:21

1 a survey?

2 A. I've heard of funnel formats. Again,
3 for -- for specific goals where they might actually
4 be a good fit.

5 Q. Is it your opinion that a funnel format 02:08:32
6 for a survey is necessarily impermissible?

7 MS. OLSON: Objection to form.

8 THE WITNESS: Yeah, it is -- it is -- so
9 for the goal of this study, the way Keegan tried to
10 implement what would be called, quote/unquote, 'a 02:08:47
11 funnel approach,' which is not exactly what he
12 implemented, but that -- that produced such a --
13 a -- a poor design, that -- that it -- it would
14 clearly be inadmissible.

15 BY MR. REBLITZ-RICHARDSON: 02:09:07

16 Q. So it's your understanding that the funnel
17 format can be used in some cases, but not in this
18 one; is that correct?

19 A. My understanding is is when you say "the
20 funnel format," I -- I interpret this as something 02:09:18
21 very different from what Mr. Keegan did.

22 So when I say an appropriate funnel format
23 for some goals of studies, this is as -- as far as
24 you can find from Keegan's actual design. Whether
25 by intention or not, what -- what was produced is a 02:09:31

1 ridiculous use of questions to come up with a number
2 that's meaningless.

3 Q. In paragraph 5 you say that Mr. Keegan
4 "could find a large proposition [verbatim] simply by
5 adding more questions to the survey." [As read] 02:09:46

6 Do you see that?

7 A. Yes.

8 Q. And how would that work?

9 A. Let's suppose --

10 (Interruption in audio/video.) 02:09:57

11 THE COURT REPORTER: Sorry.

12 THE WITNESS: Sorry.

13 THE COURT REPORTER: -- could you repeat
14 the last part, please.

15 BY MR. REBLITZ-RICHARDSON: 02:09:57

16 Q. How would that work and what questions
17 would you add? And I'm happy to break that down
18 into two questions if that's easier for you.

19 A. That's okay. I can explain the logic.
20 Suppose you had a true underlying population where 02:10:08
21 the answer is 50 percent. Okay. If you ask one
22 question, you would get 50 percent.

23 Now, if you eliminate everybody that --
24 that remained and you ask another question, you
25 would probably get 50 percent plus or minus noise. 02:10:23

1 So you would be approximating, say, 70 percent.

2 Add another question, and you would also

3 get something like that. And now you would be

4 getting, say, another 12 and a half percent. You

5 will be already about at 80 percent. Keep adding 02:10:41

6 questions, you'll get to 100 percent for sure.

7 There is no topic on Earth that -- that

8 you could find where -- where -- where -- were just

9 samples' ability of error, even by noise, even by

10 trembling hand, clicking the wrong thing. Where by 02:10:55

11 adding enough questions, you will not converge to a

12 very high number.

13 That's just the logic which is flawed

14 here, would suggest that -- that if you, you know,

15 that -- that six questions gets you the right 02:11:06

16 number.

17 Q. Is it your testimony that any question you

18 ask, you're going to get a 50/50 answer? I don't

19 understand what you're saying there.

20 A. Okay. And that's -- 02:11:18

21 MS. OLSON: Objec- -- objection.

22 Misstates the testimony.

23 THE WITNESS: Yeah, I -- I -- I never

24 actually said that.

25 BY MR. REBLITZ-RICHARDSON: 02:11:23

1 Q. That is what you said.

2 A. No. I said let's assume that you're
3 asking a question and the true distribution is
4 50 percent. I started with that; right?

5 So ask a question, say, around 50 percent 02:11:33
6 gets eliminated by this methodology. Now you're
7 left with 50 percent of the sample.

8 So by the way, you should actually count
9 it as 50 percent and not use a denominator, what
10 Keegan did with the original number. But anyway, 02:11:51
11 that's a -- that's a separate point.

12 Ask another question and -- and you will
13 get to, you know, some -- with some noise, somewhere
14 around 50 percent will answer it correctly or not.

15 And so, if you throw out another and add 02:12:03
16 these up, you will converge to a very high number.

17 Q. Well, I'm try- -- I'm trying to focus on
18 the specific questions asked here. You understand
19 that Mr. Keegan asked questions focused on private
20 browsing; right? 02:12:21

21 A. I understand that Mr. Keegan hoped he's
22 doing that. Mr. Keegan asked questions that most
23 responders -- don't interrupt, please -- that
24 Mr. Keegan asked questions that most responders
25 don't even understand what he asked about because he 02:12:34

1 used terms that most users don't understand, and
2 is -- that's especially helpful if you're -- if
3 you're going try to find a high number. That's --
4 you know, that's, by design, you're tricking people
5 into not knowing.

02:12:45

6 And evidenced as I suggested in my report,
7 as evidenced by the growing number of people in
8 Keegan's design, that say, Well, I don't know what's
9 going on. I'm not sure. Growing very, very fast,
10 to a sample that's shrinking. These particular
11 questions, you know, really don't teach us anything,
12 except maybe the first question, if it was a good
13 question, could tell you something about -- about
14 the proportion.

02:13:00

15 But the moment you start adding them up,
16 you're committing a logical error. And in this
17 logic, all you have to do -- if you want a higher
18 number as evidenced by the data, if you want a
19 higher number, just keep adding questions. People
20 don't understand and will drop out.

02:13:29

21 MR. REBLITZ-RICHARDSON: Move to strike.
22 Nonresponsive.

23 BY MR. REBLITZ-RICHARDSON:

24 Q. Professor Amir, can you focus on my
25 questions, please?

02:13:37

1 MS. OLSON: He answered your question.

2 THE WITNESS: I -- I have to say this --

3 BY MR. REBLITZ-RICHARDSON:

4 Q. Do you understand? Do you dispute that

5 Mr. Keegan asked questions regarding private
6 browsing?

02:13:44

7 MS. OLSON: Asked -- asked and answered.

8 BY MR. REBLITZ-RICHARDSON:

9 Q. Do you dispute that?

10 A. So, I do not dispute that he intended to
11 ask questions about private browsing. I disputed
12 the questions -- let me -- let me finish this
13 sentence.

02:13:54

14 I disputed the questions he actually asked
15 were meaningful to responders. So he intended to
16 ask private browsing questions, but he asked many
17 questions with terms that -- that responders don't
18 even understand.

02:14:04

19 And -- and with respect to your question,
20 Hanna swore me to say the truth and the whole truth,
21 and that's what I'm trying to do.

02:14:18

22 MR. REBLITZ-RICHARDSON: Move to strike.

23 Nonresponsive.

24 BY MR. REBLITZ-RICHARDSON:

25 Q. I'm not asking about Mr. Keegan's

02:14:26

1 intentions. Do you understand that Mr. -- Professor
2 Amir?

3 MS. OLSON: He -- he's answering your
4 question.

5 BY MR. REBLITZ-RICHARDSON: 02:14:33

6 Q. Do you understand that I'm not asking
7 about Mr. Keegan's intentions?

8 A. Yes.

9 Q. Okay. Do you understand that I'm asking
10 about the actual questions that Mr. Keegan asked his 02:14:38
11 respondents?

12 A. I understand that. And I tried to answer.

13 The fact that there -- there -- let me just -- the
14 fact that there's a statement there that the
15 engineers know is related to private browsing 02:14:48
16 doesn't mean that responders understand what it
17 means.

18 MR. REBLITZ-RICHARDSON: Move to strike.

19 Nonresponsive.

20 BY MR. REBLITZ-RICHARDSON: 02:14:59

21 Q. Do you understand that I'm asking about
22 the actual questions that Mr. Keegan asked his
23 respondents, yes or no?

24 A. Yes --

25 MS. OLSON: Objection. Asked and 02:15:08

1 answered.

2 THE WITNESS: -- I'm responding -- yeah.

3 I'm responding to your question about Mr. Keegan's
4 questions actually asked.

5 BY MR. REBLITZ-RICHARDSON:

02:15:13

6 Q. Okay. The questions actually asked, do
7 you dispute that they concerned private browsing?

8 MS. OLSON: Objection. Asked and
9 answered.

10 THE WITNESS: What I dispute is -- so --
11 so what I dispute is that responders understand what
12 the questions mean.

13 BY MR. REBLITZ-RICHARDSON:

14 Q. I'm not asking that question. Just asking
15 you whether you dispute that the questions concerned
16 private browsing.

02:15:38

17 A. No.

18 Q. You don't dispute that?

19 A. If you want me to -- you know -- do -- do
20 I think they're related to private browsing? I'm
21 answering that question. I think they are related
22 to private browsing.

02:15:49

23 Q. Thank you.

24 What additional questions relating to
25 private browsing do you think Mr. Keegan could have

02:16:00

1 added to his survey?

2 A. I'm sorry. Are you asking me to design
3 Mr. Keegan's flawed survey for him?

4 Q. You are criticizing Mr. Keegan on the
5 basis that he could find a large proposition 02:16:17
6 [verbatim] simply by adding more questions. And I'm
7 asking what questions related to private browsing
8 could he add?

9 A. And --

10 MS. OLSON: Objection to the form.

11 THE WITNESS: My point is he already has.

12 Look at his study. That's what he did. I'm -- I'm
13 not saying that he should have. I'm saying he
14 already did. He asked more questions than --

15 than -- than -- than you -- than you have to in 02:16:41
16 order to understand this issue until the point he
17 got to a very high number. Because of the structure
18 and the logic of his design, any additional question
19 you ask, by definition, because it is additive, is
20 going to get you a higher number. By definition. 02:16:56
21 If you take -- let me finish.

22 If you take the average number of -- of
23 correct responses, quote/unquote, for each question
24 as judged by the actual people responding to it, not
25 the numbers Keegan com- -- computed based on the 02:17:10

1 original thousand and four or whatever responders,
2 you will find that on average, people get it right
3 about 50 percent of the time, close to 50 percent,
4 which is consistent with my affirmative study.

5 That's exactly the point.

02:17:27

6 BY MR. REBLITZ-RICHARDSON:

7 Q. Are you done?

8 A. I hope so.

9 Q. I read your report to suggest that by
10 adding more questions, Mr. Keegan would get a higher 02:17:35
11 percentage.

12 Was that wrong?

13 A. Sorry.

14 You read -- so you read my report. Not
15 completely correctly.

02:17:44

16 Q. What --

17 A. What I said was, in this methodology, one
18 could add questions to get a higher response, which
19 is what Keegan did. Not could do; did. He added
20 more questions until he got a higher number because 02:17:57
21 it's purely additive.

22 Q. And the questions he added concerned
23 non-Google websites, logged-out activity, and the
24 specific data that Google collects; fair?

25 MS. OLSON: Objection to the form.

02:18:11

1 BY MR. REBLITZ-RICHARDSON:

2 Q. I mean, you're familiar with the questions
3 he asked; right?

4 A. Yes.

5 Q. We already established they deal with 02:18:25
6 private browsing; right?

7 A. Well, so --

8 Q. Let's just look at them. You have a chart
9 in your report; right?

10 A. Yeah. Let's look at them.

02:18:32

11 Q. Page 12. All right.

12 All right.

13 What's Figure 1, on page 12?

14 A. Sorry?

15 Q. What's Figure 1 on page 12 of your 02:18:44
16 supplemental report?

17 A. Figure 1 seems to be the flowchart through
18 Keegan's study.

19 Q. Did you prepare this?

20 A. I prepared this.

02:18:56

21 Q. Seems to be or it is?

22 A. Is.

23 Q. Okay. So this is the flowchart through
24 Mr. Seegan -- Mr. Keegan's rebuttal survey; right?

25 A. Well, the -- the -- the main question

02:19:08

1 parts.

2 Q. Right.

3 A. Yes.

4 Q. And so, you see there in Question 16,
5 Mr. Keegan asked about consent; right? 02:19:14

6 A. Yes -- Question 16. Well, you jumped one.
7 Consent. He asked about consent.

8 Q. And then with Question 17, you see --

9 A. Wait, wait, wait. Stop.

10 My point is it's not clear -- I don't 02:19:32
11 understand what consent means. Why would responders
12 understand what consent means?

13 Q. Did you test whether people understand
14 what consent means?

15 A. No, because it's a legal question. It's 02:19:44
16 not -- it has nothing to do with actual perceptions.

17 Q. Did you ask any questions regarding
18 consent?

19 A. No. Exactly for that point.

20 Q. And then Question 17, Mr. Keegan asked 02:19:55
21 about people visiting non-Google websites; right?

22 MS. OLSON: Objection to the form.

23 THE WITNESS: Question 17, he says, "Which 02:20:13
24 of the following best reflects your opinion? I
25 believe that when I am in private browsing mode, I

1 have given con- -- sorry. Question 17. Which
2 question did you say?

3 BY MR. REBLITZ-RICHARDSON:

4 Q. The next one, Question 17.

5 A. Q17, "Which of the following best reflects 02:20:26
6 your opinion? I believe when I'm in private
7 browsing mode, I've given consent to Google." We
8 talked about that. That's not Question 17.

9 Q. Do you see right below that --

10 A. Oh -- 02:20:41

11 (Interruption in audio/video.)

12 THE COURT REPORTER: Could you, please,
13 repeat what you said. Do you see right below that?

14 BY MR. REBLITZ-RICHARDSON:

15 Q. Do you see right below that, where it 02:20:46
16 states, "when I am visiting a non-Google website"?

17 A. Yeah, but that's about consent again;
18 right?

19 Q. Consent with respect to whether or not
20 you're visiting a non-Google website; right? 02:20:58

21 A. Yes.

22 Q. That's what Question 17 asks about, and if
23 it says -- do you see that? The, like, red box off
24 to the left?

25 A. Yep. 02:21:13

1 Q. So that's a Google website and then down
2 below, there's a non-Google website; right?

3 A. That's right.

4 Q. And so, this is the survey design here in
5 terms of distinguishing between whether it's a 02:21:21
6 Google website or a non-Google website; right?

7 MS. OLSON: Objection to the form.

8 THE WITNESS: But based on the survey
9 design, only for a very small sample of the original
10 sample. 02:21:33

11 BY MR. REBLITZ-RICHARDSON:

12 Q. Right.

13 A. But he dropped most of the people by now.

14 Q. And did any of your survey questions asked
15 about -- ask about visiting a non-Google website? 02:21:40

16 A. I think we established that. I don't
17 explicitly ask for either Google or non-Google. I
18 ask for websites.

19 Q. Right. And if you go to Question 18,
20 there's a question that elicits information as to 02:21:52
21 whether or not the respondent has a Google account;
22 right?

23 A. That's right.

24 Q. And none of your survey questions asked
25 about whether respondents had a Google account; 02:22:03

1 right?

2 A. That's right.

3 Q. And then if you go to Question 19,

4 Mr. Keegan sought information regarding browsing

5 while signed out of any Google account; right? 02:22:08

6 A. That's right. But do you know how many
7 people responded to this question?

8 Q. Again, none of your survey questions asked
9 about browsing while signed out of any Google
10 account; correct? 02:22:27

11 A. That's not the --

12 MS. OLSON: Objection to the form.

13 THE WITNESS: That's not the -- the
14 original question is that -- the sample size for the
15 people who responded to this in Keegan's report is 02:22:32
16 so small as to be reliable.

17 BY MR. REBLITZ-RICHARDSON:

18 Q. I'm not asking about sample size. I'm
19 asking whether you asked any questions of any of
20 your respondents concerning signed out private 02:22:39
21 browsing?

22 A. I did not --

23 MS. OLSON: Objection. Asked and
24 answered.

25 (Interruption in audio/video.) 02:22:54

1 THE COURT REPORTER: Excuse me. I'm
2 getting the objection -- I'm get- -- I'm not getting
3 the objection because of the speaking over, so could
4 you please repeat.

5 MS. OLSON: Yeah, just give me a little 02:22:58
6 bit more of a beat. Thank you.

7 I said, objection. Asked and answered.

8 BY MR. REBLITZ-RICHARDSON:

9 Q. Can you go, please, to page 19, paragraph 02:23:08
10 31.

11 A. Yes.

12 Q. Is one of your criticisms that Mr. Keegan 02:23:31
13 carried forward respondents who answered "don't
14 know" or "don't know, no opinion" in the main
15 questions?

16 A. My criticism is -- is a bit more elaborate 02:23:53
17 on that. But it's in part based on this logic, yes,
18 that if you pass people who have no idea, they never
19 drop, and you're left with most -- more people who
20 have no clue throughout the survey.

21 And I think I have an exhibit that said -- 02:24:08
22 that shows exactly the proportion of that is -- is
23 growing. So the very small sample that -- that
24 Keegan carries over is -- is -- becomes
25 predominantly occupied by people who don't know or

1 have no opinion, meaning they don't care.

2 Q. Do you know what happens to Mr. Keegan's
3 survey results for his rebuttal survey, if you
4 remove the don't knows or don't know, no opinion?

5 A. Well, I think you can do the math. If you 02:24:31
6 look at Table 2, what happens is, he very quickly
7 gets to a non-reliable sample. So calling that out
8 as results would be unprofessional.

9 Q. You reviewed Mr. Keegan's rebuttal report;
10 right? 02:24:54

11 A. I have.

12 Q. And do you recall that he had a section of
13 his report where he evaluated Google internal
14 documents?

15 A. Maybe. It's been a while. 02:25:06

16 Q. Do you recall that he had an exhibit that
17 included a summary of 40 Google internal documents?

18 A. I don't remember.

19 Q. Did you at least review those 40
20 documents? 02:25:16

21 A. I don't know if I reviewed all 40
22 documents. No.

23 Q. Do you know if you reviewed any of them?

24 A. I don't remember. If you want to put them
25 in front, I can take a look, but I don't remember. 02:25:26

1 Q. Well, let's look at one.

2 MS. OLSON: Before we do that, it's been
3 about another hour. Could we take a quick break if
4 you're transitioning with exhibits?

5 MR. REBLITZ-RICHARDSON: Okay.

02:25:38

6 THE VIDEOGRAPHER: Are we off the record?
7 Are we going off the record?

8 MR. REBLITZ-RICHARDSON: Yes, please.

9 THE VIDEOGRAPHER: Going off the record,
10 the time is 2:25 p.m.

02:25:48

11 (Short recess taken.)

12 THE VIDEOGRAPHER: Back on the record, the
13 time is 2:34 p.m.

14 BY MR. REBLITZ-RICHARDSON:

15 Q. Professor Amir, welcome back.

02:34:46

16 A. Thank you.

17 Q. Can we go to paragraph 36 of your
18 supplemental report, which is on page 24.

19 A. Give me a second.

20 36, I'm there.

02:35:12

21 Q. Would you, please, read aloud the second
22 sentence in that paragraph.

23 A. You're talking about the "one study"?

24 Q. Correct.

25 A. " [REDACTED]

02:35:35
Page 264

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]. " [As read]. 02:35:55

5 Q. Did you write that sentence? 02:35:55

6 A. Yes.

7 Q. Is that an accurate statement?

8 A. I hope so. It's from a document I cite.
9 It's page 7554.

10 Q. Did you review that document? 02:36:05

11 A. Yes, otherwise, I wouldn't cite it.

12 Q. Okay. Let's -- let's bring up that
13 document. This is GOOG-BRWN-00477546, which is
14 being marked as Exhibit 10. And that's Tab 13, for
15 Miguel. 02:36:32

16 (Amir Deposition Exhibit 10 was marked
17 electronically.)

18 A. Got it. 02:36:44

19 BY MR. REBLITZ-RICHARDSON:

20 Q. All right. 02:36:44

21 Is this Exhibit 10 the document cited in
22 Footnote 34 of your report?

23 A. '77546, hold on.

24 I need to switch between things. Sorry.

25 Q. No problem. 02:37:07

1 A. So you said this is 36. So this was
2 Footnote 34, '77546.

3 THE CONCIERGE: And, Counsel, this is
4 Miguel. Please let me know if you want me to
5 display a certain page on the screen share. Thank 02:38:05
6 you.

7 MR. REBLITZ-RICHARDSON: Thank you,
8 Miguel.

9 THE WITNESS: This seems to be the
10 document. 02:38:08

11 BY MR. REBLITZ-RICHARDSON:

12 Q. So Exhibit 10 is the document that you're
13 citing in Footnote 34; correct?

14 A. Yes.

15 Q. And can we go to the page that you cite, 02:38:14
16 which is '7554.

17 A. Yes.

18 Q. And so, for purposes of the statement in
19 your report with Footnote 34, what information on
20 this slide are you referring to? 02:38:37

21 A. So if you see --

22 Q. You see the [REDACTED] there on the
23 right; correct?

24 A. Hold on. Let me get to it.

25 [REDACTED] 02:39:06

1 [REDACTED]

2 (Interruption in audio/video.)

3 THE COURT REPORTER: Excuse me, sir. I
4 don't know if you're reading into the record, but if
5 you can -- 02:39:17

6 THE WITNESS: Sorry, I wasn't thinking
7 that I was reading into the record. Let me do this
8 properly.

9 This says, " [REDACTED]

10 [REDACTED] 02:39:25
11 [REDACTED]
12 [REDACTED]
13 [REDACTED].

14 Q. Okay. Can we blow that up, that question
15 or that statement " [REDACTED]"? 02:39:45
16 It's in the right-hand column, the second row --

17 A. Yeah.

18 Q. -- which has the [REDACTED] and
19 [REDACTED].

20 You see that there, Professor Amir? 02:40:01

21 A. Yes.

22 Q. And so, this has " [REDACTED]
23 [REDACTED]"

24 Do you see that?

25 A. This has percentage? Where is 02:40:09

1 percentage -- where do you see [REDACTED]

2 [REDACTED]?

3 Q. All right. Let's -- let's break this
4 down.

5 You see that there's a table here; right? 02:40:19

6 A. Yes.

7 Q. And on the right-hand side at the top of
8 the table, it says, "[REDACTED]." [As
9 read]

10 Do you see that? 02:40:26

11 A. Yes.

12 Q. Okay. And the second row down it states,
13 "[REDACTED]"
14 "[REDACTED]."

15 Do you see that? 02:40:36

16 A. Yeah.

17 Q. Is that a true or false statement?

18 A. Well, I believe based on the fact that
19 it's the correct answer here, the person who ran
20 this study treated it as a false answer. 02:40:49

21 Q. As a false statement; correct?

22 A. As a false -- well, it says the correct
23 answer is false.

24 Q. So the correct answer to this statement,
25 "[REDACTED]" 02:41:03

1 [REDACTED], " is false?

2 A. That's what the -- that's what it says,
3 yes.

4 Q. Okay. And what does the [REDACTED]
5 represent? 02:41:16

6 A. It's hard to tell actually. [REDACTED]

7 [REDACTED] Yeah.

8 Q. That's the percentage of people that
9 correctly stated that that statement was false;
10 right? 02:41:32

11 MS. OLSON: Objection to the form.

12 THE WITNESS: Yeah, maybe.

13 BY MR. REBLITZ-RICHARDSON:

14 Q. Well, just look at the bottom of this
15 screen, "[REDACTED]." 02:41:39

16 Do you see that?

17 A. Yes.

18 Q. So only [REDACTED] of the respondents in
19 this study got that correct; is that right?

20 A. Possibly, yes. 02:41:53

21 Q. [REDACTED] answered false; is that right?

22 MS. OLSON: Objection. Asked and
23 answered.

24 THE WITNESS: Possibly, yes.

25 BY MR. REBLITZ-RICHARDSON: 02:42:09

1 Q. Professor Amir, your report has it
2 backwards; right? Your report suggests that

3 [REDACTED]
4 [REDACTED] - -- let me --

5 let me break that down. 02:42:29

6 A. I think -- I think -- you know, let me
7 save it here. I think you're right. I think I
8 misinterpreted the false -- the true -- you know,
9 the false/false negation of this table.

10 Q. And so, in paragraph 36, the [REDACTED] 02:42:44
11 there should be [REDACTED]; right?

12 A. Well, we don't know what the other options
13 were. But -- but in this study, I might have gotten
14 it -- I might have interpreted this wrong based on
15 the true/false. 02:43:01

16 Q. Would you agree that this sentence should
17 be stricken from your report?

18 A. Yeah, I'd be happy if it's stricken from
19 my report, given that I'm not sure I understood this
20 correctly. 02:43:13

21 Q. Reviewing this page that you cited
22 including that "[REDACTED]"
23 "[REDACTED]" at the bottom, would you agree that that
24 second sentence in paragraph 36 is inaccurate?

25 A. Are you -- are you asking again the same 02:43:25

1 question, or is it a different sentence now?

2 Q. Oh, sorry.

3 Same sentence. The sentence in your
4 report that states, " [REDACTED]

5 [REDACTED] 02:43:38

6 [REDACTED]
7 [REDACTED]

8 [REDACTED], " you agree that's an
9 incorrect statement; right?

10 A. I already agreed that -- that we should 02:43:54
11 strike it, so --

12 Q. Okay.

13 A. That was --

14 (Interruption in audio/video.)

15 THE COURT REPORTER: What was the last 02:44:02
16 part?

17 THE WITNESS: I agree that that is a
18 misinterpretation on my part of this data point from
19 this exhibit.

20 BY MR. REBLITZ-RICHARDSON: 02:44:11

21 Q. And just looking at this, in this survey,
22 Google used the word "collect" instead
23 of "received"; right?

24 A. Yes. They used the word "collect."

25 Q. And did you consider the design of this 02:44:29

1 survey when you were deciding to use the
2 word "receive" in your surveys instead of "collect"?

3 A. I would say that it's very hard to
4 consider the design of this study because all we get
5 are reports of the results. We don't know the 02:44:44
6 design of the study.

7 Q. Did you ask for the design of the study?

8 A. I did not ask for the design of the study,
9 but what we have here is executive reports of a
10 study. 02:44:56

11 Q. Are you aware that this study involved
12 nearly [REDACTED] respondents in the United States?

13 A. I believe I do remember that detail, but
14 I'm not sure where it was in the document. But yes.

15 Q. But you're familiar with this study; 02:45:11
16 right?

17 A. I'm familiar with this report.

18 Q. Right. And this report includes
19 information about a study that Google collected
20 sometime after this lawsuit was filed; correct? 02:45:21

21 MS. OLSON: Objection to the form.

22 THE WITNESS: This is -- this report is
23 from March 2020.

24 BY MR. REBLITZ-RICHARDSON:

25 Q. March 2020? 02:45:31

1 A. Yes.

2 Q. Where are you looking at?

3 A. First page, "this report was generated
4 March 2020."

5 Q. All right. 02:45:40

6 Page ending '554. Let's see here. Let's
7 go to the top.

8 Do you see the subtitle there, "overall"?

9 A. Wait, wait. '554.

10 Q. Sorry, the same page. 02:46:04

11 Do you see there's a yellow title and then
12 under that, there's a subtitle that
13 starts "overall"?

14 A. I may not -- are you sure '554?

15 Q. We're on the same page. 02:46:19

16 A. Okay. Where -- where do you see --

17 there's -- I see a yellow title that says, "Chrome
18 Incognito mode: Understanding and misconceptions."

19 Q. Right. And right under that, do you see
20 where it states, "Overall," -- 02:46:32

21 A. Yeah.

22 Q. -- " [REDACTED]

23 [REDACTED]. "

24 Do you see that?

25 A. Yes. 02:46:39

1 Q. So here this is talking about Chrome
2 Incognito mode; right? We don't dispute that?

3 A. Yes.

4 Q. And they're talking about [REDACTED]

5 [REDACTED]; right? 02:46:49

6 A. Yes, but it says, "[REDACTED]
7 [REDACTED]."

8 Q. Right. And would you agree that based on
9 this study, [REDACTED]

10 [REDACTED] 02:47:04

11 [REDACTED] ?

12 MS. OLSON: Objection to the form.

13 THE WITNESS: Yeah, I -- I will say that
14 whoever generated this report thought so.

15 BY MR. REBLITZ-RICHARDSON:

02:47:19

16 Q. All right.

17 Let's -- let's go to the prior page, '553.

18 A. Yes.

19 Q. Do you see the subheading there states,

20 [REDACTED] 02:47:33

21 [REDACTED]. "

22 Do you see that?

23 A. Yes.

24 Q. Would you agree with me that that's
25 referring to Chrome Incognito mode? 02:47:46

1 A. Well, I assume so, yes.

2 Q. Okay. And so, at least the Google
3 employees involved with this presentation, it was
4 their opinion that both users and non-users
5 overestimate the protections provided by Chrome 02:47:58
6 Incognito mode; right?

7 A. You know, you're assuming that this is
8 Google employees, and in the -- you know, it -- it
9 could have been some third-party vendor that
10 presented to them the results of the study they 02:48:12
11 issued. So I'm not going to go there. But whoever
12 generated this report certainly mentioned this.

13 Q. Okay. And when you say "mentioned this,"
14 they mentioned that generally, [REDACTED]

15 [REDACTED] 02:48:29
16 [REDACTED]; correct?

17 A. That's what it says in the slide.

18 Q. Okay. Let's go back one more slide, to
19 '552. And do you see where this one states, "[REDACTED]"

20 [REDACTED] 02:48:43
21 [REDACTED]. "

22 Do you see that?

23 A. I do see that.

24 Q. And the reference there to [REDACTED]
25 [REDACTED], that's in connection with Chrome 02:48:54

1 Incognito mode; right?

2 A. That's right, but --

3 MS. OLSON: Objection to the form of the
4 question.

5 THE WITNESS: Yeah, but I'll say that, you 02:49:03
6 know, what -- what -- what I don't want to do is
7 overinterpret what you mean by "significant."

8 BY MR. REBLITZ-RICHARDSON:

9 Q. Right.

10 A. Is 5 percent significant? Is 10 percent 02:49:14
11 significant?

12 Q. Did you ask anyone?

13 A. Why would I ask anyone? I didn't talk to
14 anyone, remember?

15 Q. Okay. I'd like to go back in your report 02:49:27
16 to paragraph 10C.

17 MR. REBLITZ-RICHARDSON: You can take that
18 down, Miguel.

19 A. Do you mean the -- the supplemental
20 report? 02:49:38

21 BY MR. REBLITZ-RICHARDSON:

22 Q. Correct. We're still on the supplemental
23 report.

24 A. Paragraph 10C, let me go there.

25 Yes. 02:49:57

1 Q. In paragraph 10C, do you see where you
2 referenced "doubled-barrelled"? [As written].

3 A. Questions, yes.

4 Q. Is that just a typo?

5 A. What? 02:50:09

6 Q. Is that double-barrelled or
7 doubled-barrelled?

8 A. Oh, it should be double-barrelled.

9 Q. And what do you mean by "double-barrelled
10 questions"? 02:50:22

11 A. So one known critique of market
12 research -- and by "known," I mean that every
13 textbook describing how to build surveys deals with
14 this. When a question -- I think Aly even objected
15 to a question that you asked that was comprised of
16 actually two questions. 02:50:34

17 When you ask a question comprised of two
18 questions, it's very hard to interpret the results
19 because users may be responding to one or the other,
20 and users often find it difficult or confusing to
21 respond to this. And so you should avoid
22 double-barrelled questions. Sorry about the typo. 02:50:46

23 Q. Oh, no problem.

24 So here you say, "For example, questions
25 about 'collect and save,' which are two different 02:51:00

1 concepts."

2 Do you see that?

3 A. Yes.

4 Q. How -- how are those two different
5 concepts? 02:51:04

6 A. Well, collect could be gather. And as I
7 said, you could gather information, use it in an
8 algorithm, and then discard it. Save usually
9 ref- -- refers to for some period of time. Maybe
10 indefinitely. 02:51:25

11 Q. Are there situation [verbatim] where
12 Google collects but does not save private browsing
13 information?

14 MS. OLSON: Objection to the form.

15 THE WITNESS: I don't know. 02:51:38

16 BY MR. REBLITZ-RICHARDSON:

17 Q. Did you investigate that?

18 A. No, but I -- there are situations where I
19 collect and don't save information. So it's
20 strictly possible. Companies that I work with often 02:51:44
21 do that when they collect information they're
22 allowed to collect, but by some regulation, they're
23 not allowed to save it. And so, they, as I said,
24 apply some algorithm to the data and create some
25 KPIs or something that's obstructed away from the 02:51:58

1 data and don't actually save the data.

2 Q. But you didn't investigate the extent to
3 which that possibility applies to private browsing
4 information collected by Google; right?

5 A. I'll say that --

02:52:11

6 MS. OLSON: Objected to the form.

7 THE WITNESS: Yeah, I'll say that it
8 doesn't actually matter because the critique here is
9 not whether Google does it or not, it's whether the
10 user responding to the survey understands what
11 you're asking.

02:52:21

12 BY MR. REBLITZ-RICHARDSON:

13 Q. So is it your position that you should be
14 asking separately about collect and save?

15 A. No. It's my position that if you wanted
16 to run a self-study looking at collecting or saving,
17 you should separate them.

02:52:29

18 Q. Okay. Other than Mr. Keegan's questions
19 about collect and save, are there any other aspects
20 of Mr. Keegan's study that you identify here in your
21 report as double-barrelled questions?

02:52:46

22 A. I don't remember.

23 Q. Okay.

24 A. I can go and look. But most of the issues
25 with Mr. Keegan's survey are spelled out in my

02:52:59

1 report.

2 Q. So if -- if there is another one, it would
3 be in your report; fair?

4 A. Possibly.

5 Q. Okay. Let's -- let's look at 02:53:09
6 paragraph 10E, where you talk about "awareness of
7 lawsuits on similar topics or previous surveys
8 recently taken on similar topics."

9 Do you see that?

10 A. Yeah. 02:53:26

11 Q. Is it your opinion that Mr. Keegan should
12 have asked respondents about their awareness of
13 lawsuits on similar topics?

14 A. It is not just my opinion. It is best
15 practices. Best practices suggest that when you 02:53:37
16 conduct a survey, you leave space at the end for
17 open comments because you discover some interesting
18 things about your data and reliability and what
19 people understand or misunderstand. And you can
20 also find out important information about unknown
21 unknowns, so it's best practices to do so. 02:53:49

22 And in addition to that, it is best --
23 best practices in legal cases to ask what for
24 awareness of lawsuits and be able to test
25 sensitivity of your results to that awareness, as 02:54:05

1 we've already discussed quite a bit.

2 Q. Right. And you've at various times
3 referred to "best practices." Do you recall those
4 answers?

5 A. Yes.

02:54:16

6 Q. Okay. And what is the source for your
7 opinion regarding best practices?

8 A. So there are many sources for my opinion
9 for best practices. And best practices span legal
10 and nonlegal cases for survey work. Many of these
11 nonlegal sources are going to be textbooks for
12 market research. And in the legal world, people
13 often rely on Shari Diamond's treatises for survey
14 work.

02:54:28

15 But if you want, you know, I can show you
16 my slides of teaching market research for many years
17 that are based on textbooks that suggest that an
18 open-ended response at the end of a survey is best
19 practice.

02:54:48

20 Q. Sitting here today, are -- is it your
21 testimony that the Diamond source you referred to
22 establishes that it's best practice to ask
23 respondents about their awareness of lawsuits on
24 similar topics?

02:54:57

25 A. I don't --

02:55:09

1 MS. OLSON: Objection.

2 THE WITNESS: Sorry.

3 MS. OLSON: Misstates the testimony.

4 THE WITNESS: Yeah, I said that I relied
5 upon -- you asked what I relied upon. I gave you a 02:55:17
6 list. I don't remember which source exactly talked
7 about that point. But it's -- it's sort of a
8 well-known fact that it's something that you should
9 do.

10 BY MR. REBLITZ-RICHARDSON: 02:55:28

11 Q. Right.

12 But I'm just asking, can you identify
13 specifically any single source of this, what you
14 claim is a best practice, that you should ask
15 respondents about their awareness of lawsuits on 02:55:40
16 similar topics?

17 MS. OLSON: Objection. Asked and
18 answered.

19 THE WITNESS: Yeah, I don't know off the
20 top of my head, but I could probably offline find 02:55:50
21 out -- find sources and send to you.

22 BY MR. REBLITZ-RICHARDSON:

23 Q. In paragraph 10e, what do you
24 mean "tainted by lawsuit awareness"?

25 A. Sorry, going back to 10e -- I just 02:56:08

1 scrolled down -- I think that we discussed this
2 already. So with the risk of repeating what I said,
3 I said that it's possible that people who are aware
4 of the lawsuit either are guessing what your survey
5 is meant to be and, therefore, would -- that would 02:56:29
6 generate some demand effects, or people have strong
7 opinions about the lawsuit; and, therefore, that's
8 what your study is going to discover regardless
9 of -- of what exactly you ask.
10 And so asking people whether they're aware 02:56:50
11 and doing sensitivity analysis to see if it is, in
12 fact, the case, as I sort of -- we discussed
13 earlier, is best practice.
14 Q. Let's go to paragraph 38.
15 A. Which one? 02:57:08
16 Q. Paragraph 38.
17 A. Your -- your voice -- 38?
18 Q. 38.
19 A. Okay. Yeah, before that, I heard 30 and
20 then the rest -- 02:57:21
21 MS. OLSON: I -- I couldn't hear it
22 either, so...
23 MR. REBLITZ-RICHARDSON: Sorry.
24 MS. OLSON: But I got you now.
25 MR. REBLITZ-RICHARDSON: I'll try and keep 02:57:26

1 my voice up.

2 THE WITNESS: Sorry. I'm there.

3 BY MR. REBLITZ-RICHARDSON:

4 Q. All right.

5 At the end of that paragraph, do you see 02:57:31
6 where you write, "Mr. Keegan fails to provide
7 respondents relevant context and information,
8 specifically the documents through which users
9 provide their consent and that explain how private
10 browsing mode works, rendering his findings 02:57:48
11 invalid"?

12 A. I see that sentence.

13 Q. What do you mean by "consent"?

14 A. That's probably a poor choice of word with
15 all this legal stuff. 02:58:08

16 So if you look at the sentence above that,
17 it says, "Mr. Keegan's survey attempts to study
18 respondents' understanding of Google's data
19 collection and their consent to that collection, in
20 the context of using private browsing mode." 02:58:20

21 And I think that's based on Keegan's
22 report itself.

23 And then I said, However, Mr. Keegan fails
24 to provide those documents. So I guess I used
25 consent because that's how he refers to his 02:58:33

1 assignment.

2 "Mr. Keegan fails to provide respondents
3 relevant context and information, specifically the
4 documents through which users provide their
5 consent." So I think I base this off of Keegan's 02:58:43
6 point.

7 Q. Right.

8 And you're attacking Mr. Keegan for not
9 showing his respondents the documents through which
10 users provide consent. Is that what you say in your 02:58:58
11 report?

12 A. That's what the report says.

13 Q. Okay. What are the documents through
14 which users provide their consent?

15 A. Again, that's a legal question, but Keegan 02:59:11
16 doesn't provide any documents.

17 Q. You know that's not true, sir.

18 A. I'm sorry, Keegan shows the -- I -- I
19 don't think Keegan provides them the documents that
20 users can access if they're interested to find out 02:59:27
21 anything about the policy.

22 Q. What documents?

23 A. I mean, I'll be more specific. If you
24 look at the time spent in the Keegan study, there
25 are many reviewers -- many, sorry, responders that 02:59:43

1 spend, on average, four seconds or less on a
2 question in Keegan's study. So people there are not
3 actually seeing any documents.

4 Q. You know that Mr. Keegan presented copies
5 of the splash screen to the respondents in his 03:00:02
6 survey; right, sir?

7 A. Yes. So other than the splash screen, he
8 does not show any other documents.

9 Q. But sitting here today, can you tell me
10 what documents you're referring to here when you say 03:00:15
11 "the documents through which users provide consent"?
12 [As read]

13 A. So my guess is that the -- the stud- --
14 the documents --

15 Q. I'm not asking you to guess. This is in 03:00:24
16 your report.

17 MS. OLSON: Please don't interrupt.

18 THE WITNESS: Yeah. So the way I
19 understand this complaint, the documents that I use
20 in Group B in my second study would be those kind 03:00:37
21 [verbatim] of documents.

22 BY MR. REBLITZ-RICHARDSON:

23 Q. Professor Amir, did you conduct any survey
24 concerning Google's account creation agreement?

25 A. I -- you know, I -- I think I used that. 03:00:58

1 I may have used -- is that a document I used in my
2 second study? I don't remember. Let me check.
3 It's been a long day.

4 Yes, so in my -- in my Group C, in my
5 second study, I showed new account creation 03:01:14
6 agreement.

7 Q. Okay. Can you tell me what page you're
8 looking at?

9 A. Sorry. This is my affirmative report,
10 which I believe is Exhibit 1, and I'm looking at 03:01:25
11 page 29, Table 4, "Interpretation Survey Groups."

12 And then the third group, or what I called
13 Group C in later parts of the document, says "Splash
14 Screen with New Account Creation Agreement."

15 Q. Got it. 03:01:52

16 Okay. And so Table 4 in Amir Exhibit 1 is
17 the set of documents you presented to the different
18 groups in your second study; is that right?

19 A. Yes.

20 Q. And it's your understanding that these are 03:02:09
21 the documents through which users provide their
22 consent; is that right?

23 MS. OLSON: Objection to the form.

24 THE WITNESS: Yes, I think that in these
25 kind of documents, "New Account Creation Agreement," 03:02:24

1 and in Group 4 "Consent Bump Agreement and FAQ
2 page," those probably involved consent. But as I
3 stated earlier, consent is a legal matter in which
4 I'm not an expert on.

5 BY MR. REBLITZ-RICHARDSON: 03:02:39

6 Q. Let's go back to Amir Exhibit 3, which is
7 your supplemental report. We were looking at
8 paragraph 38, and I want to go back to paragraph 37.

9 A. One second.

10 THE CONCIERGE: And, Counsel, did you want 03:03:00
11 me to display it on the Zoom?

12 MR. REBLITZ-RICHARDSON: No. I'll get you
13 a document in a moment. First I just want to go to
14 paragraph 37.

15 THE WITNESS: I'm there. 03:03:11

16 BY MR. REBLITZ-RICHARDSON:

17 Q. All right.

18 And do you see where you state, "the same
19 research from Google suggests that the percentage of
20 respondents who are not 'misinformed' is at least 03:03:18
21 [REDACTED]"?

22 A. I do see that sentence.

23 Q. All right.

24 And so let's -- what's the -- what's the
25 document you're citing there? It's 03:03:30

1 GOOGLE-BROWN-00042388 [as read]; is that right?
2 A. '42- -- yeah, '42388.
3 Q. All right.
4 MR. REBLITZ-RICHARDSON: And so let's pull
5 that up as our next, which is Tab 20, Miguel. 03:03:46
6 (Amir Deposition Exhibit 11 was marked
7 electronically.)
8 BY MR. REBLITZ-RICHARDSON:
9 Q. All right.
10 Professor Amir, is Exhibit 11 the 03:04:22
11 Google-produced document you reference in Footnote
12 39 of your supplemental report?
13 A. Yes.
14 Q. All right.
15 And let's go to the page you cite, '2404. 03:04:33
16 A. Heading there.
17 Yes.
18 Q. And how did you calculate what you say is
19 at least [REDACTED] in your paragraph 37 of your
20 supplemental report? 03:05:03
21 A. This comes out -- I can't magnify it no
22 more. Let me download it. One second.
23 It's pretty poor quality.
24 It's hard to read. I had a better
25 version, maybe. 03:06:01

1 Let me go back to the sentence and see
2 exactly what I'm looking for.

3 Which section was this, sorry, in my -- in
4 the report?

5 Q. Paragraph 37 of your supplemental report. 03:06:36

6 A. Thirty-seven. I'm there.

7 So expect session-based tracking. So the

8 first -- the first answer is [REDACTED]

9 [REDACTED], if I read this correctly.

10 And that means at least [REDACTED] in this one do 03:07:20
11 not think that.

12 And if you look at the rest of the topics,
13 a larger proportion is actually not misinformed. So
14 the way I interpret this graph, is that the red are
15 the misinformed based on this -- on this definition 03:07:40
16 here.

17 Q. And do you see the gray?

18 A. Yeah, I do see the gray.

19 Q. Do you see it's [REDACTED] there?

20 A. Yeah. 03:07:54

21 Q. So [REDACTED] of your [REDACTED] answered
22 unsure; is that correct?

23 MS. OLSON: Objection to the form.

24 THE WITNESS: If -- if gray is unsure.

25 BY MR. REBLITZ-RICHARDSON: 03:08:07

1 Q. Well, you tell me what gray is.

2 A. Yeah, gray is unsure.

3 Q. So when you refer to [REDACTED] in
4 paragraph 37, that includes [REDACTED], people who
5 answered unsure? 03:08:19

6 A. Yes.

7 Q. Is there anything on this slide that is --
8 causes you to doubt the accuracy of that statement
9 right there at the top, "[REDACTED]"

10 [REDACTED] "? 03:08:31

11 A. So no, and I don't actually say that this
12 statement is incorrect. I said that the same
13 research suggests that the -- the -- you know,
14 the -- to reciprocal to [REDACTED] are not
15 misinformed. They don't hold the opposite opinion. 03:09:02

16 And then it's a much higher percentage in
17 other aspects -- areas of understanding of private
18 browsing mode. That's what I interpret this.

19 Q. But the [REDACTED] who answered "unsure,"
20 do you consider them informed? 03:09:20

21 A. I'm not -- no. But what I say is they're
22 not misinformed.

23 Q. Do you consider them to have consented?

24 MS. OLSON: Objection to the form.

25 THE WITNESS: Yeah, I don't -- I don't 03:09:29

1 think I speak about consent at all in this. As I
2 said before, consent is a legal matter, which I
3 don't get into.

4 BY MR. REBLITZ-RICHARDSON:

5 Q. Do you have any reason to dispute that the 03:09:53
6 majority of incognito users expect no session-based
7 tracking?

8 MS. OLSON: Objection to the form and
9 mischaracterizes the document.

10 THE WITNESS: Yeah, so I would say I have 03:09:54
11 no reason to believe that there -- this -- the
12 respondents to whatever market research this is
13 answered this way.

14 I had reason to believe, based on my own
15 affirmative studies, which I trust a lot more 03:10:06
16 because I know exactly how they were done and who
17 the population was. And in that case, you can see
18 that the majority, in some cases, does expect to be
19 tracked specifically by Google and specifically with
20 cookies when I asked about that. 03:10:22

21 BY MR. REBLITZ-RICHARDSON:

22 Q. Did any of your survey questions ask about
23 tracking?

24 A. Did -- I didn't directly ask about
25 tracking. I asked whether Google receives this 03:10:32

1 information, and I asked about cookies, and
2 respondents responded that Google receives that
3 information from cookies.

4 Q. This slide right here states majority of
5 users expect no session-based tracking; right? 03:10:47

6 A. Hold on. Let me zoom out.

7 Yes.

8 Q. Did you ask any questions about
9 session-based tracking in incognito mode?

10 A. As I said before, I asked my second survey 03:11:01
11 about Google receiving information related to
12 cookies. And that's -- my opinion was about that
13 question.

14 Q. And did you form any opinions about this
15 question, whether or not incognito users expect 03:11:25
16 session-based tracking while in incognito mode?

17 MS. OLSON: Objection to the form.

18 THE WITNESS: I -- you know, the only
19 opinion I have is -- is what I stated, that
20 Mr. Keegan cites this research with the majority of 03:11:44
21 users expecting no session. And I said, but notice
22 that there is -- you know, that majority,
23 quote/unquote, on that particular question is -- is
24 █ point something, which is why I said at least █
25 are not answering that they're misinformed and -- 03:12:00

1 and much higher in other categories, as you can see
2 from this chart. That's all I said.

3 BY MR. REBLITZ-RICHARDSON:

4 Q. Okay. And I just want to clarify. Your
5 questions in your surveys did not specifically ask 03:12:18
6 about session-based tracking in incognito mode; is
7 that right?

8 MS. OLSON: Objection to the form.

9 THE WITNESS: Yeah, let me -- let me --
10 let me go back to my expert report so I can give you 03:12:30
11 kind of an exact answer how I defined cookies
12 because I did ask about cookies. So I'm going to
13 go -- I'll tell you where I'm at in the report.

14 BY MR. REBLITZ-RICHARDSON:

15 Q. I'm not asking about cookies. 03:12:48

16 A. But I defined cookies in a certain way, so
17 I want to make sure that -- to answer your question,
18 that my definition didn't talk about anything like
19 that. So I just need to find the point where I
20 defined it. 03:13:12

21 Yeah, so the question says "Cookies placed
22 on your browser." And when respondents hovered over
23 the word "cookies," I said "a small file containing
24 a string of characters that is sent" --

25 THE COURT REPORTER: Excuse me. Sir, 03:14:03

1 could you slow down, please.

2 THE WITNESS: Sorry. I caught myself.

3 "A small file containing a string of
4 characters that is sent to your computer when you
5 visit the website. When you visit the site again, 03:14:12
6 the cookie allows that site to recognize your
7 browser. Cookies may store user preference and
8 other information."

9 So to the extent -- and, again,
10 session-based tracking is not necessarily something 03:14:24
11 users understand what it is. So to the extent that
12 session-based tracking talks about cookies, then I
13 did ask about cookies, and I explained in lay terms
14 what cookies mean.

15 BY MR. REBLITZ-RICHARDSON: 03:14:40

16 Q. But you didn't use the phrase
17 session-based tracking?

18 A. Of course I didn't use it, and that's part
19 of the point. Engineers use terms that lay people
20 don't understand. 03:14:51

21 Q. Right.

22 And so it's your position that
23 session-based tracking is not something that people
24 would understand, so you used something differently
25 in your survey; is that right? 03:14:59

1 A. Yes.

2 Q. Okay.

3 MR. REBLITZ-RICHARDSON: Let's take a
4 break.

5 THE WITNESS: Okay. 03:15:04

6 MS. OLSON: Okay.

7 THE VIDEOGRAPHER: We're going off the
8 record. The time is 3:15 p.m.

9 (Short recess taken.)

10 THE VIDEOGRAPHER: Back on the record. 03:21:53

11 The time is 3:21 p.m.

12 MR. REBLITZ-RICHARDSON: Professor Amir,
13 thank you for your time. I have no further
14 questions at this time.

15 THE WITNESS: Thank you. 03:22:05

16 EXAMINATION

17 BY MS. OLSON:

18 Q. Okay. I have a few questions.

19 If you'll pull back up Exhibit 1, which is
20 your opening report. 03:22:11

21 A. Yes.

22 Q. And do you recall that counsel asked you
23 about the screen on your appendix G.2-11?

24 A. Yes. Let me get there.

25 Yes, I'm there. 03:22:33

1 Q. Did each of the respondents who took this
2 Survey 2 see this exact screen?

3 A. Well, more or less. So each respondent
4 who took the survey saw the screen relevant to their
5 condition.

03:22:52

6 So in the second paragraph -- I mean, I
7 think it's explained in the -- in the programming
8 instructions. In the second paragraph here it says
9 "Google's Privacy Policy."

10 That's not true for every condition. So
11 every condition had their own welcome screen that
12 specified the relevant policies to that condition.
13 Here, it just shows, I think, Group B.

14 Q. Okay. And if you scroll down now to
15 G.2-16 --

03:23:22

16 A. I'm there.

17 Q. -- and -- and G .2-18.

18 Do you recall counsel asking you about
19 these screens?

20 A. Yes.

03:23:37

21 Q. So for respondents in this condition
22 group, did respondents see the privacy policy once
23 with no highlighting and then saw it again with
24 highlighting?

25 MR. REBLITZ-RICHARDSON: Object to the

03:23:53

1 form.

2 THE WITNESS: Yeah, so they first saw the
3 privacy policy. And -- and the instructions, the
4 programming instructions show exactly for how long.

5 And then when they click "next," they 03:24:05
6 showed the highlighted version, which counsel asked
7 me about, which is the same policy, but with a
8 highlight on the place we wanted to focus their
9 opinion on.

10 BY MS. OLSON: 03:24:23

11 Q. Do you recall also questioning by counsel
12 about documents that you opine are inconsistent with
13 Mr. Schneier's opinions?

14 A. Yeah, but not -- this is in my rebuttal
15 report; right? 03:24:34

16 Q. Yes. Sorry, we can turn to Exhibit 2.

17 A. Yes. I remember that question.

18 Q. And he directed you to two documents in
19 paragraph 57.

20 Do you recall that? 03:24:48

21 A. Yes. And we went over them.

22 Q. And I -- I believe you also pointed to
23 documents in Footnote 32.

24 Do you recall that?

25 A. Yes. 03:24:59

1 Q. Okay. Let's take a look at Paragraph 41
2 of your rebuttal report, which is Exhibit 2.

3 A. Yeah.

4 Q. Are there also documents that you cite in
5 this paragraph that -- that fall into the bucket of 03:25:15
6 internal Google documents that are inconsistent with
7 Mr. Schneier's opinions?

8 MR. REBLITZ-RICHARDSON: Object to the
9 form.

10 THE WITNESS: Yeah, so I -- I think I 03:25:26
11 mentioned to counsel that -- that there could be
12 others in other areas of the document, and he didn't
13 focus on that. So here in Footnote 61 and 62 are
14 other examples. And I believe that -- now that I
15 look at the location, I believe that if we scroll 03:25:46
16 down slightly further, we might find some more. Let
17 me just look for them.

18 Yeah, so -- so in Footnote 70, I point to
19 another document. Which if you go to the text, I
20 think it's Paragraph 44, on top of the page, it 03:26:12
21 says, "According to Google internal documents that
22 Mr. Schneier cites in his report, [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED], " open quote, " [REDACTED] 03:26:29

1 [REDACTED]
2 [REDACTED], " and in square brackets, "[REDACTED]
3 [REDACTED] end quote.

4 And this is from Footnote 70, which is a
5 document that Mr. Schneier cites in his Footnote 03:26:45
6 289 -- sorry, Footnote 317 on page 289.
7 So --

8 BY MS. OLSON:

9 Q. Are there --

10 (Simultaneous speaking.) 03:26:59

11 (Interruption in audio/video.)

12 A. Sorry, go ahead.

13 Q. I'm sorry.

14 Are there -- are there any other documents
15 from your report that are -- that you opine are 03:27:05
16 inconsistent with Mr. Schneier's opinions?

17 A. There could be. I didn't -- you know, I
18 didn't have time to -- to -- you know, kind of look
19 at all of them. You mentioned the Footnote 61, 62
20 and that reminded me that there are a couple more 03:27:19
21 below. There could be others. Every document
22 should be cited in my materials covered.

23 Q. Okay. And if we could just pull back up
24 Exhibit 11.

25 A. Which one is that? Hold on. 03:27:39

1 Q. Okay.

2 THE CONCIERGE: Counsel, did you want me
3 to display it on Zoom?

4 MS. OLSON: Sure. And we'll go back to
5 the same page that we were looking at right before 03:27:54
6 the break, which I think is the page that ends on
7 '404.

8 THE WITNESS: I'm there.

9 BY MS. OLSON:

10 Q. Okay. And I know we discussed that it's a 03:28:05
11 little bit blurry. But are you able to read the
12 questions that are next to the red bars?

13 A. Yes. I think to some extent.

14 Q. Okay. Are you able to read the top 03:28:26
15 question that was next to the longer -- the -- the
16 top question next to the red bar?

17 A. Yeah. It says, "

18 [REDACTED]
19 [REDACTED]."

20 Q. Was this -- did this survey ask about 03:28:48
21 session-based tracking as far as you can tell?

22 A. This question certainly doesn't mention
23 session or tracking.

24 Q. This question just mentions cookie
25 placement? 03:29:06

1 A. Yeah, it says as I said, " [REDACTED]
2 [REDACTED]
3 [REDACTED]"

4 Q. And this is the question on the slide
5 counsel was asking you about related to 03:29:18
6 session-based tracking; correct?
7 A. I believe so. I don't think we've
8 discussed any of the other questions specifically.

9 Q. Okay.

10 MS. OLSON: I have no further question. 03:29:33

11 MR. REBLITZ-RICHARDSON: Just two quick
12 followups.

13 FURTHER EXAMINATION

14 BY MR. REBLITZ-RICHARDSON:

15 Q. Going back to Amir Exhibit 1, G.2-11, that 03:29:43
16 counsel asked you about.

17 A. Let me get there. Hold on, my computer
18 stopped responding to this. Let me try Exhibit
19 Share.

20 Overburdening Adobe. One second. G.2-11, 03:30:05
21 G.2-11, I'm there.

22 Q. And do you recall that Google's counsel
23 asked you about some variation with respect to the
24 second paragraph there in G.2-11?

25 A. Yes. 03:31:02

1 Q. And with respect to every respondent
2 included in your second survey, did this welcome
3 screen include the statement "you have been selected
4 to answer the questions about Chrome, which is a
5 browser from a company named Google"? 03:31:14

6 A. I believe so. If you want to scroll for
7 sure that in F-2 something, I can find that in a
8 second. It'll tell us exactly what was varied. So
9 give me a second, and I'll give you the exact answer
10 to your question. 03:31:30

11 Yeah, so F.2-7 shows Q1 and shows the
12 first sentence you just read that doesn't vary. And
13 the second paragraph has square brackets with a
14 capital stimuli, and that, in the paragraph below,
15 says "pipe into stimuli," and it shows the three 03:32:05
16 other versions for group A, B, and C or D.

17 Q. And so, just to confirm, there was no
18 variation in that first paragraph, which includes
19 the statement "you have been selected to answer
20 questions about Chrome, which is a browser from a 03:32:23
21 company named Google"; right?

22 A. That's right.

23 Q. Okay. And then you were asked about
24 G.2-16 and whether or not certain respondents were
25 shown the Google privacy policy twice. 03:32:38

1 Do you recall that?

2 A. Yes.

3 Q. And do you recall that I asked you that
4 question earlier today, and you stated that no
5 respondent would have viewed the Google privacy 03:32:48
6 policy more than once.

7 Do you recall that?

8 A. I recall that.

9 Q. And prior testimony was incorrect; right?

10 A. Well, I -- you -- they would not be shown 03:32:57
11 this screen twice, but I think that conceptually, it
12 was inaccurate because the emphasis came with the
13 next screen of the same policy, with the -- the
14 highlighted section.

15 Q. So were there respondents who were shown 03:33:12
16 the Google privacy policy twice?

17 A. Again, they see the same document with the
18 added highlight. So if you want to think about it
19 as shown twice, then yes. Or respondents would
20 likely see it as the same document. They didn't see 03:33:29
21 the document change, but this highlight appearing.

22 Q. Right. But earlier I asked you just
23 simply whether any respondent saw the Google privacy
24 policy twice; right?

25 A. Yes. 03:33:42

1 Q. I asked you that question, and you said
2 no, that wouldn't happen?

3 A. Yes.

4 Q. And -- and that was incorrect?

5 A. Again, it wasn't exactly incorrect. But I 03:33:48
6 think that for the goal of your questions, it was an
7 accurate response. Because the next click -- the
8 next click kept the same policy on the screen but
9 had an added highlight to it.

10 Q. Right. So for those respondents, you 03:34:04
11 would show them the Google privacy policy again, but
12 this time with highlights?

13 A. Yes.

14 MR. REBLITZ-RICHARDSON: I have no further 03:34:15
15 questions.

16 MS. OLSON: Go off the record.

17 THE VIDEOGRAPHER: This concludes today's
18 videotaped deposition of Dr. On Amir. We are off
19 the record at 3:34 p.m. Thank you.

20 (Proceedings concluded, 3:34 p.m., PDT, on
21 August 16, 2022.)

22

23

24

25

1 CERTIFICATE OF REPORTER
2

3 I, Hanna Kim, a Certified Shorthand
4 Reporter, do hereby certify:

5 That prior to being examined, the witness
6 in the foregoing proceedings was by me duly sworn to
7 testify to the truth, the whole truth, and nothing
8 but the truth;

9 That said proceedings were taken before me
10 at the time and place therein set forth remotely and
11 were taken down by me in shorthand and thereafter
12 transcribed into typewriting under my direction and
supervision;

13 I further certify that I am neither
14 counsel for, nor related to, any party to said
15 proceedings, not in anywise interested in the
16 outcome thereof.

17 Further, that if the foregoing pertains to
18 the original transcript of a deposition in a federal
19 case, before completion of the proceedings, review
20 of the transcript [x] was [] was not requested.

21 In witness whereof, I have hereunto
22 subscribed my name this 19th day of August, 2022.

23
24

25

Hanna Kim, CLR, CSR No. 13083

1 ALYSSA "ALY" OLSON, ESQ.

2 alyolson@quinnmanuel.com

3 August 19, 2022

4 RE: BROWN vs. GOOGLE LLC

5 AUGUST 16, 2022, ON AMIR, PH.D., JOB NO. 5344524

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext
10 to schedule a time to review the original transcript at
11 a Veritext office.

12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF
13 Transcript - The witness should review the transcript and
14 make any necessary corrections on the errata pages included
15 below, notating the page and line number of the corrections.
16 The witness should then sign and date the errata and penalty
17 of perjury pages and return the completed pages to all
18 appearing counsel within the period of time determined at
19 the deposition or provided by the Code of Civil Procedure.

20 ___ Waiving the CA Code of Civil Procedure per Stipulation of
21 Counsel - Original transcript to be released for signature
22 as determined at the deposition.

23 ___ Signature Waived - Reading & Signature was waived at the
24 time of the deposition.

25

xx Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF

Transcript - The witness should review the transcript and make any necessary corrections on the errata pages included below, notating the page and line number of the corrections. The witness should then sign and date the errata and penalty of perjury pages and return the completed pages to all appearing counsel within the period of time determined at the deposition or provided by the Federal Rules.

— Federal R&S Not Requested - Reading & Signature was not requested before the completion of the deposition.

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1 JURAT
2
3

I, ON AMIR, PH.D., do hereby certify under
penalty of perjury that I have read the foregoing
transcript of my deposition taken remotely on
Tuesday, August 16, 2022; that I have made such
corrections as appear noted herein in ink, initialed
by me; that my testimony as contained herein, as
corrected, is true and correct.

Dated this _____ day of _____, 2022,
at _____.

ON AMIR, PH.D.

1 RE: BROWN vs. GOOGLE LLC

2 ON AMIR, PH.D. (JOB NO. 5344524)

3 E R R A T A S H E E T

4 PAGE _____ LINE _____ CHANGE _____

5 _____

6 REASON _____

7 PAGE _____ LINE _____ CHANGE _____

8 _____

9 REASON _____

10 PAGE _____ LINE _____ CHANGE _____

11 _____

12 REASON _____

13 PAGE _____ LINE _____ CHANGE _____

14 _____

15 REASON _____

16 PAGE _____ LINE _____ CHANGE _____

17 _____

18 REASON _____

19 PAGE _____ LINE _____ CHANGE _____

20 _____

21 REASON _____

22 _____

23 _____

24 ON AMIR, PH.D.

Date

25 _____

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[700 - adobe]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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